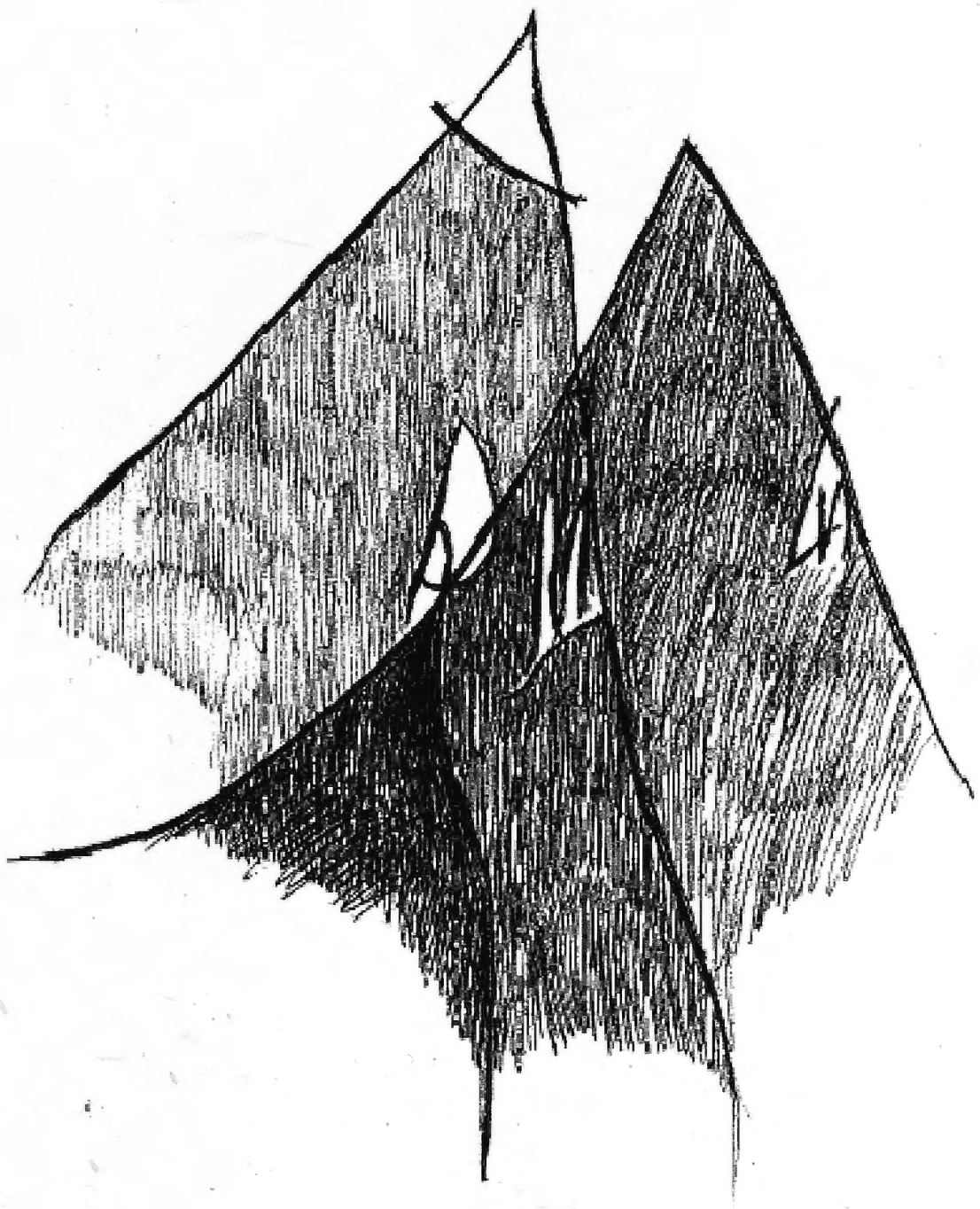
Crossing the Mountains

Negotiating the relationship between the Department of Conservation and Māori in Tongariro National Park, Aotearoa New Zealand.



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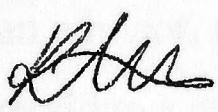
Thesis submitted for the degree of Doctor of Philosophy of the Australian National University.

February 2012

Statement

The research presented in this thesis is all my own work, unless noted otherwise.



Keri Mills, February 2012.

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Thanks and acknowledgment to the little girl who pinched my sketchbook at the closing hearings of the National Park inquiry and drew the outline of the sketch which appears on my title page. I could not have drawn such a funky picture of the mountains without you and I'm sorry I don't know your name. Our joint artwork was created on the 12th of July 2007.

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Abstract

This thesis presents an analysis of the relationship between the New Zealand Department of Conservation and the local Māori groups involved in the management of Tongariro National Park, during a historical Waitangi Tribunal inquiry into the park area. The relationship between Māori and the New Zealand government, as with indigenous groups and governments in other settler societies, is profoundly affected by historical events and the contemporary understandings of those events. I identify key strengths and weaknesses in the relationship at Tongariro National Park, and investigate their historical origins.

I argue that the local relationship between the Department of Conservation and Māori is hampered by the different expectations for the relationship each party brings to the negotiating table. These differing expectations stretch back to the establishment of the park in the late nineteenth century, and were enshrined during the early twentieth century in the legislation, policy and public attitudes that structure the national park institution. The relationship's strengths included the goodwill with which both parties usually engaged with each other, the longevity of key relationships, and the political nous of local Māori leaders. These features date back to the 1970s and 1980s when the introduction of public consultation in park decision making led to the development of personal relationships between park management staff and Māori.

Claimant and Crown interpretations of the park's history were strongly shaped by the incentive structures of the inquiry process, leading to emphasis on certain events and aspects of the historical relationship that, in my analysis, were not always the most significant. Tribunal inquiries tend to be strongly adversarial, and the inquiry over Tongariro National Park put stress on personal relationships in the area. The usual patterns of interaction between Māori and the Department of Conservation were disrupted during and after the hearings. This may be only a short-term effect, but is noteworthy as one of the goals of the Treaty settlement process is to support ongoing relationships between Māori and the New Zealand government, and little work has been done into the impact of the inquiry process on relationships "on the ground."

Notes on language

The macron above vowels in Māori words indicates a long vowel sound. Māori vowels are pronounced as follows: 'a' as in f<u>a</u>ther, 'e' as in k<u>e</u>pt, 'i' as in k<u>i</u>wi, 'o' as in f<u>o</u>rt, 'u' as in t<u>u</u>ne. 'Wh' is usually pronounced as an 'f' sound, and 'ng' is pronounced as in so<u>ng</u>. The Māori language seldom uses affix plurals, so whether or not a Māori word is singular or plural must be read from the context.

Māori words are italicised at first mention, and thenceforth written in plain text, except in cases where the first mention appears in a direct quote, where the formatting is left as it is in the original. There is a glossary at the very end of the thesis for easy reference.

After careful thought I decided to chiefly use 'New Zealand' rather than 'Aotearoa,' or 'Aotearoa New Zealand' in the body of this thesis. 'Aotearoa New Zealand' is too unwieldy for repeated use, and though Aotearoa is a much more beautiful name than New Zealand, and a Māori name much more appropriate than a Dutch one, it is difficult to modify 'Aotearoa' when writing in English. There is no easy way to describe the people of Aotearoa or the phenomena relating to Aotearoa, using the word Aotearoa, as one can write 'New Zealander' or 'New Zealand weather.' There is also ongoing dispute as to whether Aotearoa is a suitable name for the whole country when it was originally used to describe only the North Island, and the South Island has other names (Te Wai Pounamu and Te Wāhi Pounamu are the most commonly used).

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Introduction

> On 23 September 1887, a deed was drawn up in the court at Taupō in which, on behalf of his tribe, Te Heuheu Tukino IV (Horonuku) gifted the summits of Tongariro, Ngauruhoe and part of Ruapehu to the Crown, thus initiating a process which led to the creation of New Zealand's first national park. Although the park was modelled on a concept imported from the United States of America, where the world's first national park had been created at Yellowstone, Wyoming, in 1872, it was unique in that its nucleus was the gift of an indigenous people. Thus a major new dimension was added to the national park ideal with the gift of the sacred volcanic summits creating a three-way bond between land, Māori and Pākehā.[1]

So begins the 2006-2016 management plan for Tongariro National Park (Tongariro), a 79,598 hectare area of mountainous and volcanic land in the central North Island of Aotearoa New Zealand. The idea of the "three-way bond between land, Māori and Pākehā" (New Zealanders of European ancestry) comes from a statement made by the great-grandson of Horonuku in 1987, in a book published as part of the centennial celebrations for the park.[2] Tongariro is a celebrated place, a World Heritage site listed for its natural and cultural values, touted as the "first national park to be established in New Zealand," and the "first park in the world to be gifted by a country's indigenous people."[3] In the same year as the above quoted management plan was released, however, a series of hearings began into the history of the park, in which the local indigenous people contested, among other things, whether there had been an intended gift at all.

These hearings were part of a Waitangi Tribunal inquiry. The Waitangi Tribunal is a Commission of Inquiry established to investigate Māori claims that the Crown has breached the Treaty of Waitangi, signed in 1840 between a representative of the British Crown and many Māori chiefs across New Zealand. If the Tribunal judges a claim to be well-founded, it will make recommendations for redress to the government, which then enters settlement negotiations with the claimant groups. Claims are usually grouped by district and heard together in large inquiries. The Tribunal's inquiry into the area in and

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[1] Department of Conservation Tongariro Taupō Conservancy, *Tongariro National Park Management Plan / Te Kaupapa Whakahaere Mo Te Papa Rēhia O Tongariro, 2006-2016*, (Turangi:, Department of Conservation Tongariro Taupo Conservancy, October 2006), 20.

[2] Sir Hepi Te Heuheu, foreword to Craig Potton, *Tongariro: A Sacred Gift* (Auckland and Nelson: Landsdowne Press and Craig Potton, 1987), 8.

[3] "Tongariro Facts," Department of Conservation, http://www.doc.govt.nz/parks-and-recreation/national-parks/tongariro/features/tongariro-facts/.

around Tongariro (the National Park inquiry) covered such issues as the acquisition and creation of the national park and its subsequent management, as well as land alienation and public works in the area.

The park is owned and run by the New Zealand Government, through its Department of Conservation (DOC), and though there are various means of Māori involvement in management decisions, the main process is one of consultation, in which DOC seeks Māori opinion on issues thought to be of concern to them, and take those opinions into account. Both the design and the practice of this management relationship have been criticised heavily by the Māori claimants in the course of the inquiry.

Research questions

My primary research questions in this thesis were:

1. What are the problems and strengths of the Māori-DOC relationship at Tongariro; and
2. How did they arise?

These are important questions to ask if we are interested in making relationships more successful. Identifying problems and strengths and investigating how they came about provides information about how problems can be avoided or minimised and how strengths can be achieved and supported. It is an important time to ask these questions in New Zealand. Several recent Waitangi Tribunal inquiries have included national park lands, and the settlements that will follow from them are likely to cause a substantial restructure of management relationships. This is an opportunity to improve relationships.

These questions are also more widely relevant, across countries where there are settler and indigenous groups attempting to work together in park management. The historical theme of dispossession and marginalisation of indigenous groups by colonising groups is similar across countries. The political battles to reclaim land and self-determination are also alike. The participants involved in relationships at Tongariro communicate with people involved in park management in other places around the world, and see themselves as part of a larger network of park management. There has been travel and exchange between those involved in the relationship at Tongariro and people involved in parks in Australia, Canada and the United States, to name just a few relevant countries.

My two main questions and the sources I used to investigate them raised supplementary questions. In order to identify the problems and strengths of management relationships it was important to further question the nature of a "problem" and the nature of a "strength." Both need to be understood in relation to a concept of success: a problem hinders progress towards success, a strength assists progress. In order to understand what constitutes success in relationships I investigated the following two questions in some detail:

a. What are the objectives of these relationships, and
b. How important is it that people involved in the relationship agree on those objectives?

The timing of my research, during a Waitangi Tribunal inquiry, and the fact that I used many of the documents created for the inquiry as sources, required me to consider:

c. What effect has the inquiry process had on the relationship, and
d. What effect did the inquiry have on each party's characterisation of the relationship?

This final question was intended to contextualise the information I received, because an understanding of the highly politicised context within which the statements about the relationship were made is necessary for a good understanding of the statements themselves. The question was not intended in order to second-guess the information I received about relationships. With so little data unaffected by the claims context it was unrealistic to speculate on what the characterisations of the relationships might have looked like if not for the claim.

Structure of the thesis

The thesis consists of eight chapters and a conclusion. In the first chapter I introduce the New Zealand context and review the literature on government-Māori relationships in conservation. In the second chapter I address the questions about the objectives of relationships and how important it is that they are shared. In chapter three I outline the framework for analysing these relationships and identify the key problems and strengths

of the Māori-DOC relationship at Tongariro. I draw on New Zealand and international co-management (or collaborative management) literature for this analysis.[4]

In chapter four I address the subject of Tribunal inquiries, specifically the way it affects ongoing relationships and the way its processes shape the submissions presented to it in evidence. This is in order to understand the highly political process in which the parties were engaged at the time of my research. It is also a necessary background chapter as it describes the incentives and conventions which shape the submissions I use as data.

The final four chapters address periods of Tongariro's history. Each gives a very brief overview of New Zealand race-relations during the period, and how they affected relationships in the Tongariro area. I then turn to the submissions and my interview answers to discuss the way the period has been described by the Crown and claimant parties in the inquiry. Chapter five examines the creation phase, from the first suggestions for a national park in the 1870s to the formal declaration of the park in 1907. Chapter six discusses the development of the national park institution from 1907 to the 1970s. Chapter seven discusses the period from the 1970s to the beginning of the National Park inquiry hearings in 2006, during which time the policy of consultation with Māori was developed. These chapters examine the key role that history, and understandings of history, play in today's relationships, and the way the Tribunal process privileges particular kinds of narratives about that relationship. In chapter eight I return to the time of the National Park inquiry hearings and slightly beyond, in 2006-8. Using the Waitangi Tribunal submissions and my interview data, I address the way the inquiry process shaped the debate about contemporary relationship issues at Tongariro.

In the conclusion I argue that DOC and Māori held different ideas about the meanings and objectives of their interaction, and these different expectations about their relationship were not managed well. The consultative model of relationships in place at Tongariro and other national parks at the time of my research did not meet Māori expectations for their relationship with DOC, and the opportunities for power-sharing over smaller projects and areas were increasingly limited. These problems in the design of relationships go back to the early years of the twentieth century when the key features and meanings of the national park institution evolved, almost entirely without

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[4] "Collaborative management" and "co-management" are sometimes defined differently, but as I mostly use the terms to define literatures, rather than management situations, I use them broadly and interchangeably to cover all the writing which refers to some level of sharing in management decision-making. See p30 for a fuller discussion of co-management definitions.

Māori input. The key strengths of relationships at Tongariro were their longevity, the goodwill which generally characterised them, and the ability of Māori to successfully challenge DOC through means such as the courts and the Waitangi Tribunal. These are all aspects of the relationship since the 1970s and 80s. These years saw important changes in legislation and in Pākehā attitudes, though the problem of differing expectations remained throughout.

Theoretical and Methodological Approach

For the first part of my question I used a framework derived from management literature and supplemented by the literature on collaborative management, in order to analyse the relationship and identify its key features. In the belief that the best information about the nature and condition of the relationship would come from the people involved, I focused heavily on the attitudes and understandings of practitioners in the park management relationship. A large number of my sources were drawn from the submissions to the National Park inquiry, which were mainly written in 2006, and the transcripts of the inquiry hearings, which were held during 2006 and 2007. I also interviewed many of the key participants in the consultation processes of park management during and soon after the hearings period. Other key sources included policy documents, and minutes of park-related meetings.

The second part of my question, on how the key features of the park relationship evolved, is historical. The history chapters trace the key elements of the park relationship at the time of the hearings, back into its past, in the manner of a genealogy. The history of Tongariro, and the way that history is interpreted by those involved in park management, are vital to understanding today's relationships. Past events and practices created the institutions within which these relationships operate, and parties' attitudes towards each other are usually shaped by their previous interactions and their understandings of their history. A historical approach is doubly important in this case study as Tongariro was the subject of a historical claim and, at the time of my research, the main players in park management and local Māori affairs were embroiled in a process of discussion and debate on the history of the park's creation and management stretching back to the mid-1800s.

Historian Klaus Neumann argues that a genealogical approach to history can be useful in terms of changing policy in the present:

> A genealogical approach could help us to develop strategies for moving out of the present - by identifying trends that have historically run counter to dominant elements of the status quo …A genealogical approach could invoke history to argue for a policy change, and it could at the same time demonstrate how current references to the past tap into patriotic sentiment and function to justify the status quo.[5]

National parks are often acclaimed as places sacred to the nation, and their establishment an act of great foresight by politicians and lobbyists of the past. These narratives of protection and foresight have a tendency to disinherit Māori from a connection or right to those places distinct from the rights of 'all New Zealanders.' Looking more closely into the birth and development of national parks in New Zealand makes it clear that although the desire to protect these places for future generations was one motivation in the establishment and management of Tongariro, it was not the only motivation, and many of the government's management measures over the years have had detrimental effects on the qualities DOC now seeks to preserve.

Reflecting the importance of the park's history to today's relationship, there are four historical chapters, each dealing with a distinctly different period in the park's history. Each of these periods was also treated very differently in the inquiry, with much attention and research focused on the establishment of the park, and relatively little attention devoted to the years between 1907 and 1970 during which there was little interaction between park managers and Māori.[6] The period since 1970 was heavily referred to in individual submissions, but only a single scoping report investigated the relationship in that period, and concluded that there were too few problems in the relationship to warrant further research. The time of the inquiry, though not long enough to constitute a historical "period," was a unique time in the park's history and required a separate chapter. The data I used for the history chapters included archival sources, the historical reports submitted to the National Park and related Waitangi Tribunal inquiries, Crown and claimant submissions, my interview data, and published works.

A case study approach is essential for a nuanced study of relationships. Relationships are idiosyncratic and complicated, and they are always changing. They are best understood in the context of their history and contemporary political situation, and with first-hand knowledge of the individuals involved. The attendant risk of this deeper

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[5] Klaus Neumann, "The Cornelia Rau case: a historical perspective," (talk given in the History Department, University of Melbourne, May 1 2, 2005), http://www.apo.org.au/commentary/cornelia-rau-case-historical-perspective.

[6] This is with the exception of a large research report on the development of hydroelectric scheme harnessing water from the mountains.

contextual and historical inquiry is that any findings might be limited in their relevance to Tongariro itself. There are two key ways in which a particularised study can be more widely useful: either as a result of the typicality of the case, such that the study's findings are applicable to many other similar places; or due to the *extraordinariness* of the case, such that the findings are of note in and of themselves.[7] Tongariro is an extraordinary place. It is one of the oldest national parks in the world, a World Heritage Site recognised for its physical landscape and cultural associations, and it has a unique history. There are two particular reasons why Tongariro makes a rich and useful case study of cross-cultural relationships. One is that it was initiated by an unusual action – a gift, the cultural meanings of which are contested. The second is that Tongariro has recently been generating a large body of data about the different ways that the parties understand their obligations to one another.

The title of the thesis is derived from the Australian academic Greg Dening's 'islands and beaches' metaphor, which he described as follows:

> 'Islands and Beaches' is a metaphor that helps my understanding. It is not a model that makes behavior predictable. 'Islands and beaches' is a metaphor for the different ways in which human beings construct their worlds and for the boundaries that they construct between them. It is a natural metaphor for the oceanic world of the Pacific where islands are everywhere and beaches must be crossed to enter them or leave them, to make them or change them. But the islands and beaches I speak of are less physical than cultural. They are the islands men and women make by the reality they attribute to their categories, their roles, their institutions, and the beaches they put around them with their definitions of 'we' and 'they'.[8]

His "beaches" are both boundary spaces and sites of interaction, similar to literary theorist Mary Louise Pratt's idea of "contact zones" as "…social spaces where cultures meet, clash, and grapple with each other, often in contexts of highly asymmetrical relations of power…"[9] More specifically, the title borrows from Dening's idea of "crossing the beach" as a metaphor for cultural and institutional change. I use this metaphor for illustrative rather than analytic purposes. The national park institution in New Zealand, as I will explain, is something of a Pākehā 'island,' formed at a time when Māori interests and voices were given little attention by the government. Though Māori interests and voices are now a much larger part of the way the park is run, they are still essentially sidelined in the decision-making process of national park

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[7] Robert Stake, *The Art of Case Study Research* (London: Sage Publications, 1995), 4-7.
[8] Greg Dening, *Islands and Beaches: Discourse on a Silent Land: Marquesas 1774-1880* (Carlton, Victoria: Melbourne University Press, 1980), 3.
[9] Mary Louise Pratt, "Arts of the Contact Zone," *Profession* (1991): 34.

management. The Waitangi Tribunal, on the other hand, is a carefully constructed "beach," where two cultures meet and debate the meaning of their past and the shape of their future. The National Park inquiry is a crossing, a cultural exchange that will reshape the park.[10]

The title also plays on the name of the Tongariro Alpine Crossing (formerly the Tongariro Crossing), the popular day walk which is a part of what makes these mountains an international tourist attraction.[11] In peak season from December to March, thousands of travellers cross the mountains every day. The crossings this thesis is concerned with, however, are the metaphorical crossings made by the Department of Conservation and Māori, as they negotiate over the management of the mountains.

Contribution to the field

What 'the field' is for this study is not a straightforward question. For my investigation into the strengths and weaknesses of the relationship at Tongariro, I looked to the literature concerned with the question of how to provide for successful collaborative management (or co-management) of natural resources. The voices of practitioners are often absent from the discussion in the co-management literature about how relationships should work. I hope to offer some clarity on the ways in which practitioners see these relationships, and the ways they want the relationships to change. The co-management literature is also often synchronic, concerned with contemporary issues, and takes insufficient account of the way relationships between government and indigenous peoples are profoundly affected by historic events and understandings.

The historical chapters borrow from and contribute to the growing work on environmental and race-relations history in New Zealand. As of yet there are few works which address the overlap areas of conservation and race-relations history, outside the reports produced for Waitangi Tribunal inquiries. In contrast, the literature on the Waitangi Tribunal is one of the more developed in New Zealand historiography. Historians tend to focus on the published historical reports of the Waitangi Tribunal and debate whether or not these reports meet, or intend to meet, the standards of academic

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[10] Both the park and the Tribunal could be usefully described as 'social spaces' for the purpose of this thesis. Most of the interactions regarding the management of the park take place outside the park bounds, and though the Waitangi Tribunal has a headquarters in Wellington, its hearings take place in diverse sites all over the country, from *marae* (Māori community meeting places) to school halls. The phrase 'the Tribunal' is used to describe the people who comprise it more often than it is used to describe a place.

[11] In 2007 the Tongariro Crossing was renamed the Tongariro Alpine Crossing as part of an attempt to dissuade visitors from attempting the walk without the appropriate clothing, footwear and emergency supplies for mountain conditions.

history. My key sources were the submissions made by Crown and claimant and lawyers and non-expert witnesses. These are politically motivated statements and are very useful for understanding the perspectives and interests of key participants in the inquiry. Very few historians have used the non-expert or lawyer-led submissions as data, which is surprising, as they are a rich source of group and individual perspectives on the Māori-government relationship and its history. The submissions, particularly the group submissions, are influenced by the way the Tribunal is designed and the procedure by which it operates. I will discuss the kinds of narrative and characterisation that are encouraged by the Tribunal process in the historical chapters of this thesis.

There are difficult generalisations involved in seeking "Māori" and "government" perspectives. The opinions and understandings of government agents and Māori individuals involved in park management relationships are as many and varied as the personalities of the individuals themselves. There are Māori who work at DOC, making dichotomisation problematic. During my fieldwork period about ten percent of DOC's fulltime staff were Māori.[12] In some ways the Waitangi Tribunal process sorts out these technical difficulties: claimant and Crown individuals are sorted into camps by the very structure of the claim, and the official written statements of claimants and Crown witnesses are clearly labelled as to which party they fall into. Any Māori, and only Māori, can bring forward a claim, and the claims must be against the Crown. But this clouds the complexity of relationships. There are Māori among departmental staff, and there has been one Māori Conservation Minister: Sandra Lee, from 1999 to 2002. A Pākehā Member of Parliament in the late nineteenth century and his land agent brother, who were instrumental in some of the alleged Treaty breaches under investigation in the inquiry, are ancestors of some of the claimants. The differences between Māori and Pākehā are real, but they are seldom simple. Part of my aim in this study is to expose some of the problems created by the rigid binary of "Māori" and "the Crown" in the National Park inquiry, particularly the way it obscures some important issues in the relationship, such as the role of Māori staff at the Department of Conservation, the attitudes of the Pākehā public and the influence of national park interest groups.

This analysis will add to the fledgling literature on collaboration between the state and Māori in conservation efforts. It is an important time to be looking at these questions in New Zealand, where the government is coming under increased pressure to introduce

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[12] Department of Conservation, *Annual Report for the year ended 30 June 2008*, (Wellington: Department of Conservation, 2008), table 4, 69.

co-management in national parks. As I will argue, with reference to Tongariro's history, the design of institutions is a key factor in the success of the relationships that take place within them and in regard to them. Before co-management of national parks is established in New Zealand it is timely to look at the sorts of problems that face collaborative efforts, as well as how they succeed, how those strengths and weaknesses have evolved, and the way the Waitangi Tribunal process filters and angles these debates. My analysis of Tongariro offers insights into all these subjects.

Chapter One: DOC-Māori Relationships

Relationships between governments and minority indigenous populations tend to be fraught. Attempts to work together are often hampered by the continuing effects of historical wrongs done to indigenous people, and the resentments engendered by those events. How to negotiate these history-laden relationships is a question being struggled with in most places where indigenous groups still exist as political entities after colonisation. The very nature of the relationship between settler governments and indigenous people is contested. There is much political and intellectual debate over which specific rights belong to indigenous groups, what resulting responsibilities accrue to settler governments, and why. There are varying definitions of what it means to be indigenous, whether it means the group with the first recorded ties to a particular piece of land, or the group in occupation at the time of colonisation, and how closely it is linked to minority status.[1]

Land and natural resources are often at the hub of conflicts. This is partly a contest over the power to own and control these places, and to harness the economic opportunities that the environment generates. It also reflects much deeper issues regarding indigenous and settler peoples' rights and duties with regard to the land and each other. This thesis looks at a very particular kind of place: a national park. The national park institution is a global one, with its own International Union for the Conservation of Nature (IUCN) category. The IUCN definition for national parks is:

> … large natural or near natural areas set aside to protect large-scale ecological processes, along with the complement of species and ecosystems characteristic of the area, which also provide a foundation for environmentally and culturally compatible spiritual, scientific, educational, recreational and visitor opportunities.[2]

This definition has changed since the first IUCN categories were designed, a small example of the continuous evolution of the concept of a national park since Yellowstone National Park was established in 1872. The designation of a national park was, at its genesis, a grand name for grand places, a statement of national pride and a gesture to

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[1] Jeremy Waldron debates some of these questions with particular reference to New Zealand in Jeremy Waldron, "Indigeneity? First Peoples and Last Occupancy," *New Zealand Journal of Public and International Law* 1, no. 1 (2003).

[2] "Category II National Park," International Union for Conservation of Nature, http://www.iucn.org/about/work/programmes/pa/pa_products/wcpa_categories/pa_categoryii/.

'the people' that such places would be kept for all to enjoy. The asset to the nation provided by tourists coming to see these grand places was also part of the original motivations in the late nineteenth and early twentieth century. As the national park institution has changed over the last century it has gathered further meanings, such as a scientific learning ground, a sanctuary for the protection of native species and environmental processes, and a place where infrastructural development should be limited.

In New Zealand, a country which prides and promotes itself on its 'clean and green' environmental image, national parks are both important assets in the country's tourism earnings and icons of national identity. National parks are sometimes referred to as the 'jewels of the conservation estate,' the country's most beautiful places, reserved for 'the people' now and to come.[3] There is a historic link between parks and mountainous areas in New Zealand, partly because of the grandeur of the scenery, and partly because mountain lands were not suitable for farming or agriculture, and thus could not be put to more 'productive' use. To Māori many mountains are *tūpuna* (ancestors), and therefore *tapu*, or sacred. The key mountain of a tribal area is recited as a part of the introductory *pepeha* (saying) which Māori use to identify themselves. Places like this, which are of great cultural value to settler and indigenous groups alike, bring to the forefront these issues of rights and duties towards each other and the land.

Since 1987 DOC has been the government agency charged with managing national parks. It cannot, in any meaningful way, be said that there is a unitary relationship between an entity "DOC," and an entity "Māori." Both these entities are complicated. DOC is split into regional conservancies, and each conservancy has a substantial degree of autonomy from headquarters.[4] Although DOC has a guiding Act of Parliament, and freely available national and conservancy level policy documents outlining its philosophy, intention, and rules of behaviour, its work is carried out by individuals, who have their own personal philosophies, intentions and behavioural patterns that also affect their actions. The idea of a single Māoridom is even more precarious. Māori are

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[3] Some examples follow, all elicited by a proposal by the National-led Government in 2010 to allow for limited mining in some national park areas. The proposal was eventually abandoned due to the level of public opposition. Jane Clifton, "The Big Dig," *New Zealand Listener* 3653 (2010), http://www.listener.co.nz/current-affairs/politics/the-big-dig/. John Minto, "Keep Mining out of Conservation Estate," *Frontline*(2010), http://www.stuff.co.nz/business/blogs/frontline/3458018/Keep-mining-out-of-conservation-estate. "Saving the Nation," *Otago Daily Times*(2010), http://www.odt.co.nz/opinion/editorial/98762/saving-nation?page=0%2C0.

[4] Brief of Evidence of Doris Johnston, Acting General Manager (Policy), on behalf of the Department of Conservation, Wai 1130, #H2, November 10, 2006, paragraphs 10-13, 7-8.

not organised into a fully representative body at a national level. There are various pan-Māori authorities, prominent amongst which are the New Zealand Māori Council, the Federation of Māori Authorities, and the Māori Women's Welfare League, but though they play important roles at the national level, none are fully representative.[5] Māori representation tends to be stronger at the level of iwi and hapū (usually translated as "tribes" and "sub-tribes," though this is problematic),[6] which has been encouraged by government policies and the Treaty settlement process.[7] The representative bodies at hapū, and especially iwi level have also met criticism for representing only a minority of Māori in their area.[8] There are urban Māori authorities and other groups that challenge the more 'traditional' iwi- and hapū-based structures of Māori political organisation. DOC's consultation processes tend to be between conservancy management staff and iwi and hapū representatives or groups, and it is more meaningful to say there are relationships between these smaller groups.

A second complicating factor is the notion of a "relationship." This is an immensely broad and flexible concept. The Oxford dictionary defines relationships as:

> **1** the way in which two or more people or things are connected, or the state of being connected. → the way in which two or more people or groups regard and behave towards each other.[9]

Any connection involving mutual regard and behaviour between two or more individuals or groups, can be said to be a relationship. The distinction between group and individual relationships is important to clarify. Given that a group does not possess consciousness and therefore cannot "regard" things, a group relationship is an abstract idea, a generalisation about a set of individual, personal relationships. Group relationships are in everyday conversational currency, however. "The DOC-Māori relationship" is a phrase that would not seem odd or obscure to New Zealanders (though

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[5] K. Gover and N. Baird, "Identifying the Māori Treaty Partner," *The University of Toronto Law Journal* 52, no. 1 (2002): 44-5.

[6] Angela Ballara suggests "peoples" for iwi and "clans" (based on descent from a common ancestor) for hapū, might be better translations, as they avoid the more rigidly defined terms of tribe and sub-tribe. Membership of an iwi, especially, is based on choice as well as ancestry. See Angela Ballara, *Iwi: The Dynamics of Māori Tribal Organisation from C.1769 to C.1945* (Wellington: Victoria University Press, 1998), 17, 25-35.

[7] Gover and Baird, "Identifying the Māori Treaty Partner," 45, 49-52.

[8] For example Roger Maaka argues that the traditional descent -based tribe as the proper vehicle for modern Māori representation is a meaningful ideology for only an educated Māori political elite. Roger C. A. Maaka, "The New Tribe: Conflicts and Continuities in the Social Organization of Urban Maori," *The Contemporary Pacific* 6, no. 2 (1994), http://scholarspace.manoa.hawaii.edu/bitstream/handle/10125/12988/v6n2-311-336.pdf.txt?sequence=2.

[9] Catherine Soanes and Angus Stevenson, eds., *Concise Oxford English Dictionary*, 11th ed. (Oxford: Oxford University Press,2004).

it might elicit a few strong opinions), despite the fact that it must refer to countless interconnections, made up of the attitudes with which members of DOC and members of Māori groups regard each other, and the exchanges between them, across the entire country.

There are other important distinctions to make within the broader concept of "relationships." The distinction between "regarding" and "behaving" is one: the attitudes held by a person or group can be seen separately from their behaviour towards each other. Another distinction is between formal interaction, which is organised and takes place between individuals officially selected as representatives of Māori and DOC, and informal interaction, which occurs without organisation, sometimes outside of work hours. Informal interaction is less studied, although it can influence decision-making. A fourth distinction is the "paper" relationship – the expressions of intent in statutes and policy documents, against the relationship in practice, the actions and interactions of individuals in the daily processes of management. This is a distinction that many claimants have drawn attention to in the course of the National Park inquiry. They allege that the relationship 'on the ground' does not live up to the lofty proclamations in policy documents.

In this particular kind of relationship, a park management relationship, there is another important dimension that cannot be ignored, and that is the relationship between people and the land. My primary focus is the relationship between DOC and Māori, but this relationship cannot be properly understood without knowing something about the way each party attaches to the land, and the ways they believe the land should be managed. There is a truth to Sir Hepi Te Heuheu's description of a 'three-way bond between land, Māori and Pākehā.' Though I focus on the relationships between people, the relationships between people and the land are always present in the background.

In this thesis I look at all these aspects of relationships, using a framework borrowed from a pair of writers in the literature on management and leadership: Lee Bolman and Terrence Deal. I concentrate on DOC's Tongariro-Taupō Conservancy, where Tongariro is located, and the conservancy staff's liaisons with the two iwi Ngāti Tūwharetoa and Ngāti Rangi. I will, however, draw some cautious conclusions about relationships between DOC and Māori more widely. Although relationships vary in their local political and environmental contexts, and the personalities of the individuals involved, they operate in very similar regulatory environments, under the same

legislation, general policies and departmental operating system. Māori across the country have suffered similar effects of social and economic marginalisation through colonisation, and their grievances, though different, are similar in kind. I argue that the issues created by this regulatory environment and these histories are some of the most important obstacles to successful relationships, and careful generalisations can therefore be useful.

Tongariro and the National Park inquiry

Tongariro sits just to the southwest of Lake Taupō, in the centre of the North Island of New Zealand. Three volcanic mountains, Ruapehu, Ngauruhoe and Tongariro (Mt Tongariro), are encompassed by the 79,598 hectare park zone. It is usually referred to as New Zealand's oldest national park, and the fourth oldest in the world, though these claims rely on a genesis date of 1887, when a deed of conveyance was signed by Horonuku Te Heuheu Tukino IV (Horonuku), the then paramount chief of the iwi Ngāti Tūwharetoa (Tūwharetoa). This deed transferred the legal ownership of 2,640 hectares to the government of New Zealand, for the purposes of a national park. These blocks were comprised of two circles each with a radius of one mile around the peaks of Tongariro and Ngauruhoe, and most of a circle of one and a half mile radius around the peak of Ruapehu. The *Tongariro National Park Act* was passed in 1894, and the park was officially proclaimed in *The New Zealand Gazette* in 1907.[10]

During my research period, a hundred years on from the park's declaration, Tongariro was the subject of a Waitangi Tribunal inquiry, one arm of which was brought forward by the great-grandson of Horonuku: Sir Hepi Te Heuheu Tūkino VII (Sir Hepi). Two major iwi have interests in the Tongariro area: Tūwharetoa in the north; and the Whanganui confederation in the southwest. Tūwharetoa and Ngāti Rangi (a Whanganui iwi) were the dominant claimants in the National Park inquiry, although the inquiry was made up of more than forty separate claims. Most of the claimants belonged to or represented Whanganui and Tūwharetoa groups. Their claims were bunched into eighteen clusters and heard together as the National Park inquiry.[11]

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[10] The Egmont National Park Act was passed in 1900, which would make it the oldest national park in New Zealand if Tongariro's 1887 genesis date wasn't recognised. Jacinta Ruru draws attention to the forgotten delays in Tongariro's establishment in Jacinta Ruru, "Indigenous Peoples' Ownership and Management of Mountains: The Aotearoa/New Zealand Experience," *Indigenous Law Journal* 3(2004): 111-38, 23.

[11] Each claim has a 'Wai number.' The National Park claim number is Wai 1130.

Among other things, the Tūwharetoa claimants contested the meaning of the 1887 conveyance, and the nature of the responsibilities the government of New Zealand undertook in its acceptance of the so-called 'gift' of the mountain peaks. Other Māori groups and individuals have made claims in reference to lands in the National Park inquiry district (which extends beyond the bounds of the park itself), some of which contend that their rights in the area were ignored in the 'gift' event, and the subsequent purchasing and proclaiming of lands surrounding the peaks.[12] The claims against the New Zealand government, or, more precisely, "the Crown," also include the way the park has been managed since its creation, and the role, or lack of role, Māori have had in the decisions made over the mountains. One of the key demands made by the Māori claimants is for a stronger, better-structured role in park management.

The People of the Park

Ngāti Tūwharetoa

Ko Tongariro te maunga
Ko Taupōnuiatia te moana
Ko Tūwharetoa te iwi
Ko Te Heuheu te tangata

This is a pepeha of Ngāti Tūwharetoa. It identifies Tongariro as their key mountain, Lake Taupō as their water body, Tūwharetoa as their iwi, and Te Heuheu as their chief. Ngāti Tūwharetoa, or just Tūwharetoa, is a large and relatively powerful iwi based in the central North Island around Lake Taupō. In the 2006 census 34,674 people identified as Ngāti Tūwharetoa, making them the sixth most populous iwi in the country.[13] The iwi authority is the Tūwharetoa Māori Trust Board (the Trust Board), which was established in 1926 and is located in Tūrangi. Its chairman is Tumu Te Heuheu, who is the Ariki, or the paramount chief, of Tūwharetoa. The Trust Board's members are elected for three year terms by their beneficiaries, in this case all members of Tūwharetoa who choose to vote.

Tūwharetoa is composed of many different hapū. Te Kāhui Māngai Directory of Iwi and Māori Organisations (Te Kāhui Māngai Directory), administered by Te Puni Kōkiri, the Ministry for Māori Development, lists fifty-six hapū. Several of these hapū made submissions in the inquiry. The relationship between the Trust Board and these hapū is often complex. One example of this from the National Park inquiry was a group

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[12] See Appendix D: Map of the Inquiry District.
[13] Statistics New Zealand website, accessed 15 March 2011, http://www.stats.govt.nz/.

associated closely with the mountain lands, Ngāti Hikairo, which was split in the inquiry, with one group affiliating as a hapū of Ngāti Tūwharetoa and another group standing as an iwi in its own right. Much of the consultation between the Tongariro-Taupō Conservancy and Tūwharetoa was with the Trust Board, and informally with the groups they are linked to through individual departmental staff.

Whanganui

Mai i te kāhui maunga ki Tangaroa, ko au te awa, ko te awa ko au.

This is a frequently quoted Whanganui pepeha. It can be translated as: *From the gathered mountains to the sea, I am the river, and the river is me.* The Whanganui tribes are a loose confederation of iwi and hapū based along the Whanganui River, which runs northwest from Tongariro to Taumarunui, then turns and heads southwest to meet the sea at the coastal city of Whanganui. Te Kāhui Māngai states that the wider Whanganui group "...includes, but is not limited to: Te Atihaunui a Papārangi ... Ngāti Hauā, Ngāti Rangi and Tamahaki." Most of the Whanganui River lay outside the Tongariro-Taupō conservancy, but the upper river runs along the west of the national park, and its fount is on Tongariro mountain, so the Whanganui groups of the upper river have interests in land which fell within the conservancy, and all Whanganui iwi have interests in the waterway to its source. Ngāti Rangi, based around the southwest of Ruapehu, had the closest relationship with the Tongariro-Taupō conservancy.

There are no census data available for Ngāti Rangi as a discrete tribe. The Tongariro-Taupō conservancy liaised with the Ngāti Rangi Trust, and with people at *marae* (Māori community meeting places), primarily organised through individuals who have worked for, or closely with DOC. In the inquiry several other Whanganui groups in the region criticised DOC for not liaising with them to the same degree as DOC liaised with Ngāti Rangi. Of these, Ngāti Tamahaki had a close relationship with the then Taranaki-Whanganui conservancy, but felt ignored by the Tongariro-Taupō staff. Ngāti Tamakana, Uenuku, and other groups with close family ties to Ngāti Rangi lodged claims accusing DOC of failing to consult with them. The tribal politics of these groups is complex. Some inquiry time was devoted solely to the topic of who certain groups were and how they related to their close neighbours. In their submissions, individual claimants from these groups often described feeling that others disputed their identity.

The Tongariro-Taupō Conservancy

The Tongariro-Taupō Conservancy came into being when DOC was established in 1987, and was merged with the Whanganui-Taranaki Conservancy (creating the Whanganui-Taranaki-Tongariro Conservancy) in 2010, after my fieldwork ended. At the time of my research the Conservancy was one of fourteen regional divisions of DOC, an area based around the water catchment leading into Lake Taupō. Each conservancy was headed by a Conservator, who answered to either the North Island or South Island General Manager, who answered to the Director-General. Below the Conservators on this "delivery line," are area managers, of which there were three in the Tongariro-Taupō Conservancy, one in charge of the Whakapapa area, which included Tongariro, one in charge of the Turangi/Taupō area in the north, and a Fisheries Manager, who looked after the fisheries in Lake Taupō. Staff in these managerial roles were all closely involved in liaison with Māori.

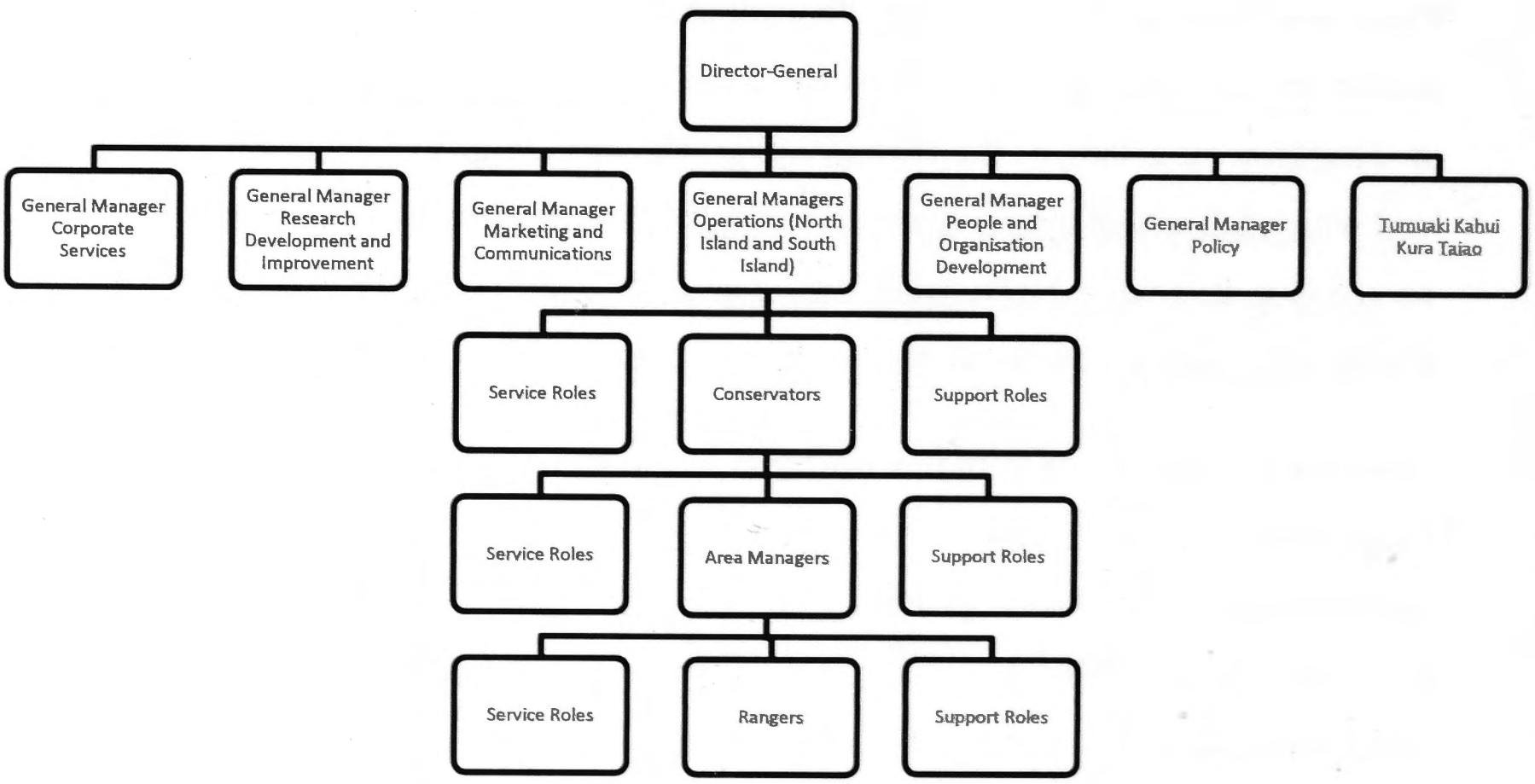

Figure 1: DOC organisational chart.[14]

Other key roles in the liaison with Māori were the community liaison manager, who supported the Conservator and area managers, and the Pou Kura Taiao, which DOC translates as "Indigenous Conservation Ethics Manager."[15] There was one Pou Kura

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[14] The model for this chart was sourced on the DOC website, accessed 10 August, 2008, http://www.doc.govt.nz/templates/page.aspx?id=42579. DOC's structure has since changed, but is shown here as it stood at the time of my research.

[15] Interview with Whanganui Pou Kura Taiao, October 23, 2007.

Taiao position in the Tongariro-Taupō Conservancy. Each of the three consecutive staff who held this position was a member of Tūwharetoa.

The policy framework for park relationships

The language used to describe relationships in government policies and in wider political discourse draws very heavily from interpretations of the Treaty of Waitangi, so it will be useful to briefly describe it here and explain how it is used in government policy. As the people at Tongariro were swept up in the Tribunal inquiry process at the time of my research the Tribunal process and its place in the wider Treaty settlement process will also be outlined here.

The Treaty of Waitangi

The Treaty of Waitangi (the Treaty) has a central position in the organisation of, and debates about, Māori-government relationships. The Treaty, signed in 1840, is a short document: a preamble and three articles, of which there is one Māori version and several in English. Many, but not all, Māori chieftains across the country put their names or marks to the document. Although kept alive in Māori tradition, especially in the northern North Island, the Treaty had a long fallow period in Pākehā and government attention, before bursting back into political life in the 1970s. In the early twenty-first century it is widely cited as the 'founding document' of New Zealand, the basis for allowing Pākehā settlement in the country, and the creation of a national government.[16] There is a significant, lively and largely Pākehā minority, however, who do not accept the legitimacy of the Treaty, and regard it as out-of-date and irrelevant to current events.[17]

In English the Treaty claims British sovereignty and guarantees tribes the "full possession" of their lands, forests, fisheries and other properties, as long as they wish to retain them. In the Māori version, the word *kawanatanga* (*kawana* is a transliteration of "governor" and *tanga* is a nominalising suffix) is used instead of "sovereignty," and *tino rangatiratanga* (absolute chieftainship) is guaranteed over their land, villages and all treasured possessions.[18] These differences in the versions make it a difficult document to use as a guide for action, and as a result the idea of "Treaty principles" has

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[16] The phrase 'founding document' pervades both academic and policy discourse.
[17] See Giselle Byrnes, "'Relic of 1840" or "Founding Document", the Treaty, the Tribunal and Concepts of Time " *Kōtuitui: New Zealand Journal of Social Sciences Online*(2006), http://www.rsnz.org/publish/kotuitui/2006/01.php.
[18] See Appendix A for the full texts.

been adopted in legislation and policy. The principles of the Treaty have been left deliberately vague by the courts and the Waitangi Tribunal, which are the bodies that have the mandate to identify them. The Tribunal has defended its choice to leave the principles open-ended, saying the Treaty must be allowed to evolve to remain relevant to changing conditions.[19]

The Treaty is not enforceable in New Zealand law, except where it is referred to in specific statutes. References to the Treaty and its principles are common in legislation passed since the mid-1980s, and ubiquitous in documents produced by the public service. Conservation policy is one of the areas in which the Treaty and Māori issues are paid particular attention, partly due to historical factors described in the later chapters of this thesis. These factors led to the inclusion of a section in the *Conservation Act* 1987 stating that "[t]his Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi."[20]

The Treaty settlement process

The first statute to include the Treaty in New Zealand domestic law was the *Treaty of Waitangi Act* 1975, which established the Waitangi Tribunal. The Tribunal has jurisdiction to define the principles of the Treaty, investigate breaches of those principles in claims brought before it, and make recommendations for settlement to the government. Settlements are then negotiated between tribal representatives and the Office of Treaty Settlements, a branch of the Ministry of Justice. Treaty settlements usually involve a combination of cash and property compensation to tribes, and the redesign or establishment of partnership institutions and protocols between the iwi or hapū and government bodies.[21] Relationships between Māori and the government across the country are being reshaped as Treaty settlements progress.

Many, but by no means all, of the grievances Māori hold against the government concern events in the nineteenth century. There was a period of warfare in New Zealand in the 1860s and after the violence subsided the government made substantial land confiscations. A huge amount of Māori land was transferred into government and settler ownership over the second half of the nineteenth century and the beginning of the twentieth. This transfer was facilitated by the operations of the Native Land Court,

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[19] Waitangi Tribunal, *Motunui-Waitara Report* , Wai 6, (Wellington: Waitangi Tribunal, 1983), paragraphs 10.1-10.3.
[20] *Conservation Act 1987,* section 4.
[21] Office of Treaty Settlements website, accessed December 10, 2010, http://www.ots.govt.nz/.

which allocated the title for land from collective ownership into the hands of groups of individual owners.[22] The wars, confiscations, and operations of the Native Land Court and its agents, are keenly remembered by the tribes affected. Environmental degradation and the resultant loss of traditional food, craft and medicinal resources has been a recurring feature of claims. Another major source of grievance is the takings of Māori land for public works throughout the twentieth century, especially those takings which were not returned after the land was no longer being used for the intended purpose.

Treaty settlements usually involve statutory changes, in which existing institutions are reorganised, and funding is provided for the economic and political development of tribes. Co-management of contested resources is increasingly being established as part of settlement deals, the largest of which is a multi-party co-management arrangement over a section of the Waikato River established in 2008.[23] There have been small scale co-management arrangements, involving joint DOC-Māori decision making bodies set up between DOC staff and representatives of local iwi or hapū in a few scattered pockets of the conservation estate, such as Lake Waihora in the South Island, which was established as part of the Ngai Tahu Treaty settlement in 1998. DOC and Ngāti Awa, from the eastern Bay of Plenty, have a joint management committee called Te Tapatoru ā Toi, formed as part of the Ngāti Awa settlement in 2005, which manages three sites of importance to the iwi.[24] Some shared responsibility arrangements also exist over particular resources. DOC and Ngāti Wai, in the far north, have a protocol for the use and disposal of whale remains. Management of the *kiekie*, a plant that is used in weaving and other crafts, growing in Morere Scenic Reserve, on the east coast of the North Island, has been largely devolved to local iwi Ngāti Rakaipaaka.[25] The completed settlements over regions including national parks have not, as yet, led to co-

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[22] From 1865 to 1873 the number of owners on the title was limited to ten. After 1873 any number of owners could be listed.

[23] Linkhorn, Craig, 'Valuing tikanga – sharing power through co-management' , paper written for the Post Treaty Settlements Website, a joint venture between the Institute of Policy Studies and Te Kawa a Māui, Victoria University of Wellington, 2001. http://posttreatysettlements.org.nz/valuing-tikanga-sharing-power-through-co-management/.

[24] Moutohorā (Whale Island) Wildlife Management Reserve, Ōhope Scenic Reserve and Tauwhare Pā Scenic Reserve. See the DOC website at http://www.doc.govt.nz/getting-involved/sponsorships-and-partnerships/regional-sponsorships-and-partnerships/te-tapatoru-a-toi/ for details.

[25] See Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Te Taumata Tuarua, vol. 1, (Wellington: Waitangi Tribunal 2011), 300-303; also Brad Coombes, "Postcolonial Conservation and Kiekie Harvests at Morere New Zealand–Abstracting Indigenous Knowledge from Indigenous Polities," *Geographical Research* 45, no. 2 (2007).

management, but proposals for co-management are being discussed in three claims involving national park lands, including Tongariro.[26]

Legislation and policy

DOC's guiding legislation is the *Conservation Act* 1987, which was one of the first pieces of legislation to mention the Treaty. The precise wording of section four, which stipulates that that the provisions of the Act "be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi" was and remains one of the strongest directives for the enforcement of the Treaty in New Zealand law.[27] The uncertainty over the definition of Treaty principles, however, makes that enforcement more complicated. Although almost all government bodies interpret the principles as at least involving a duty to consult, the courts have ruled that this duty is not absolute.[28] The stipulation in the *Conservation Act* to give effect to Treaty principles also only applies as long as those principles are not clearly inconsistent with the provisions of the Act in question.[29]

The Conservation General Policy, DOC's overarching national policy document, lists five Treaty principles that were nominated by the government in 1989. They are the principles of government, self-management, equality, reasonable co-operation and redress. The Conservation General Policy does not elaborate on what they mean except to say that those principles will be applied differently, taking into account the statutory conservation framework and the significance of the resource in question to Māori.[30]

Mention of 'partnerships' riddles conservation policy documents as well as wider discussion relating to the DOC-Māori relationship. Partnership is defined in DOC's national policy documents as "[t]he relationship between individuals or groups that is characterised by mutual cooperation and responsibility for the achievement of a specific

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[26] The National Park Inquiry (Tongariro), Te Urewera District Inquiry (Te Urewera National Park) and the Whanganui Lands Inquiry, as well as the ongoing negotiations in the wake of the Whanganui River Inquiry and Report (Whanganui River National Park).
[27] Ruru, "Indigenous Peoples' Ownership and Management of Mountains," 120.
[28] Merata Kawharu, "Rangatiratanga and Social Policy," in *Waitangi Revisited: Perspectives on the Treaty of Waitangi*, ed. Michael Belgrave, Merata Kawharu, and David Williams (Melbourne: Oxford University Press, 2005), 106. For detail, see Janine Hayward, "Appendix: The Principles of the Treaty of Waitangi," in *Rangahaua Whanui National Overview Report*, ed. Alan Ward (Wellington: Waitangi Tribunal, 1997), 479-83.
[29] *Ngai Tahu Maori Trust Board v Director-General of Conservation* [1995], 3 New Zealand Law Reports 553.
[30] Department of Conservation, *Conservation General Policy*, (Wellington: Department of Conservation, 2005), 15.

goal."[31] DOC's 'Partnerships Toolbox.' also known as *Te Kete Taonga Whakakotahi*, which was in draft form when the claim was being heard, removes some of this clarity by saying partnerships lie on a continuum, and "[a] reasonable and practicable degree of tangata whenua involvement in any particular case may range from consultation to the exercise of full control."[32]

The legislation and national policy, therefore, leave DOC with a substantial degree of licence to interpret the nature of their responsibility to Māori, though it is required to take action of some form. In response, DOC has implemented a number of initiatives to involve Māori. There is a strategic branch, the Kāhui Kura Taiao, which concentrates on Māori issues, and one or two Pou Kura Taiao in each of the conservancies. The roles of the Pou Kura Taiao are to "represent, advise, manage and support the Conservator and Conservancy relationships with iwi," as well as to implement the initiatives of the Kāhui Kura Taiao.[33] The Pou Kura Taiao tend to spend a lot of time out of the office attending iwi and hapū events.[34]

DOC also runs a number of initiatives with Māori across the country. The Ngā Whenua Rāhui committee (which is part of the Kāhui Kura Taiao) administers the Mātauranga Māori fund, to protect Māori knowledge; and the Ngā Whenua Rāhui fund, providing financial and technical assistance to establish Māori-managed reserves on Māori land. Treaty settlements have led to some special arrangements between DOC and particular tribes, such as the joint management of Lake Waihora with Ngai Tahu in the South Island.

Māori also have seats on key conservation bodies which give advice to DOC, such as Conservation Boards. Conservation Boards are independent statutory bodies that are funded through DOC. There is one for each conservancy, and their role is to help write and monitor local DOC policy, to advise DOC and the New Zealand Conservation Authority, and to represent the community in general.[35] They have up to twelve members, nominated by the community and appointed by the Minister of Conservation with regard to their interests or expertise in conservation, natural sciences, cultural

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[31] Department of Conservation, *General Policy for National Parks*, (Wellington: Department of Conservation, 2005), 67.
[32] Department of Conservation, Draft of *Te Kete Taonga Whakakotahi: A Conservation Partnerships Toolbox,* Document #H2(a), Wai 1130, received by the Waitangi Tribunal November 10, 2006.
[33] DOC website, accessed 15 May 2010, http://www.doc.govt.nz/about-doc/role/maori/kahui-kura-taiao/.
[34] Interview with Tongariro-Taupō Pou Kura Taiao, March 2, 2007.
[35] "Conservation board information," http://www.doc.govt.nz/templates/page.aspx?id=39014 accessed March 13, 2007, http://www.doc.govt.nz/templates/page.aspx?id=39014; Ruru, "Indigenous Peoples' Ownership and Management of Mountains," 127, 135.

heritage, recreation, tourism, the local community and Māori perspectives. This is not a statutory requirement to appoint Māori to all boards, though in practice there has been substantial Māori membership.[36]

There was a statutory provision for a descendent of Horonuku Te Heuheu to sit on the Tongariro-Taupō Conservation Board. This goes back to a condition made by Horonuku at the time of the transfer of the mountain tops from Tūwharetoa to the Crown in 1887.[37] No other iwi or hapū in the conservancy had a statutory seat on the board. There are also statutory provisions for tangata whenua to sit on the boards relating to Egmont and Aoraki National Parks, as a result of Treaty settlements in those areas.

Māori are also represented on the New Zealand Conservation Authority (NZCA), which is an independent statutory body appointed by the Minister of Conservation, and funded through DOC. The NZCA reviews and approves all DOC's policy documents, including Conservation Management Strategies and National Park Management Plans. It has thirteen members, two appointed on advice from the Minister of Maori Affairs. One of those members is nominated by the tribal council of Ngai Tahu (Te Rūnanga o Ngai Tahu), as a result of their settlement deal.

Tongariro is a World Heritage site, listed as an associative cultural landscape, which is a place considered valuable "by virtue of the powerful religious, artistic or cultural associations of the natural element rather than material cultural evidence."[38] The World Heritage Convention is designed to encourage the identification and protection of sites around the world deemed to be of "outstanding value to humanity."[39] World Heritage listing has connected Tongariro to a wider network of protected areas across the world. From 2004-2007 the *Ariki* (Paramount Chief) of Ngāti Tūwharetoa, Tumu Te Heuheu,[40] was a member of the World Heritage Committee,[41] and from 2006-2007 he was the chair. Tongariro has hosted workshops and gatherings of World Heritage managers.[42]

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[36] Most boards have more than one Māori member. In her evidence Doris Johnston said that in 2006 31% of board members across the country were Māori, Brief of Evidence of Doris Johnston, #H2, paragraph 44, 15.

[37] Robyn Anderson, *Tongariro National Park: An overview report on the relationship between Maori and the Crown in the establishment of the Tongariro National Park,* Wai 130, #A9, commissioned by the Crown Forestry Rental Trust, 2005, 67.

[38] UNESCO website, accessed 3 May 2008, http://whc.unesco.org/en/culturallandscape/#1.

[39] UNESCO website, accessed 3 May 2008, http://whc.unesco.org/en/about/.

[40] Sir Tumu Te Heuheu was knighted in 2009.

[41] The World Heritage Committee is a body made up of 21 representatives from State Party signatories. It is responsible for the implementation of the Convention.

[42] World Heritage Managers Workshop, October 26-30, 2000; First Pacific World Heritage workshop, February 2007.

The impact of World Heritage listing on the management policy of sites in New Zealand seems to be more symbolic than material, however. There is nothing in New Zealand legislation that designates specific rules for World Heritage site management. Tongariro's listing as a cultural landscape has been cited by DOC as a focus for increasing Māori involvement:

> New Zealand's three World Heritage sites are on land already managed for conservation purposes.... Each is recognised for its outstanding natural character and one (Tongariro) is also recognised as an outstanding cultural landscape. This cultural association and New Zealand's Treaty obligations to Mäori have provided a focus for increasing the involvement of Mäori in the work of the World Heritage Convention.[43]

World Heritage listing, or more specifically the threat of its removal, was used as a political tool in the management of an impending lahar (mudslide from a crater lake) on Ruapehu, which is described in chapter seven. In terms of strategic planning, and in day-to-day decisions, however, World Heritage listing seems to have little or no effect on the way the park is run, or on the role of Māori in its management.

Conservancy policies

The locally-devised Conservation Management Strategy (CMS), written by the Conservation Board in collaboration with the DOC conservancy office is the main guiding document for the conservancy. The CMS sets out the principles of the Treaty that the conservancy will follow, and the more specific objectives derived from those principles. In brief, the nine principles covered are the right of the Crown to govern; the right of Māori to exercise authority over their own affairs; the right of Māori to exclusive and undisturbed possession of their lands and resources; equality; the right of Māori to exercise customary guardianship over culturally significant resources; good faith relationships; active protection of Māori interests in resources; the duty of the Crown to be informed on Māori opinion and the duty to redress past injustices and prevent new ones from occurring.[44] These principles were negotiated extensively with Māori after Tūwharetoa brought a claim (Wai 480) to the Tribunal in 1995. Tūwharetoa alleged that the principles listed in the CMS at that time failed to meet the standards required by section 4 of the *Conservation Act*, and constituted a breach of the Treaty. To avoid an inquiry DOC agreed to renegotiate the principles with Tūwharetoa.

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[43] Department of Conservation, *Periodic Reporting on the Application of the World Heritage Convention*, (2002), 6, http://whc.unesco.org/archive/periodicreporting/cycle01/section1/nz.pdf..

[44] Department of Conservation Tongariro/Taupō Conservancy, *Tongariro/Taupo Conservation Management Strategy 2002-2012,* (Department of Conservation: Turangi, 2002), section 3.7.4, 105-7.

The document which most immediately guides the management of the park is the Tongariro National Park Management Plan. The management plan lists eleven principles reflecting the "core values of the park," each written in English and in the Māori language (Te Reo Māori).[45] Six of these include references to Māori. One refers to the 1887 'gift':

> The mountain peaks are a taonga, a gift to the people of New Zealand from the Tūwharetoa people. They must be managed in a way which acknowledges and respects their mana [dignity/status] and mauri [life force]. World Heritage status recognises the park's cultural heritage: co-operative conservation management must protect them. That early gift by the people of Tūwharetoa reinforces a sentiment felt by many New Zealanders towards their protected places and in particular the peaks and landscape of Tongariro National Park, which are so much a part of New Zealanders' lives.[46]

Other principles recognise World Heritage obligations for the park's natural and cultural listing, and the directive in the *Conservation Act* to give effect to the Treaty of Waitangi. There is also a principle 'to provide for co-operative conservation management':

> The Department of Conservation cannot manage public conservation lands without a relationship with tāngata whenua. The relationship between the Crown and iwi will be exercised within the park through co-operative conservation management. The implementation of *He Kaupapa Rangatira,* a framework and protocol for giving practical expression to the partnership with iwi, will ensure that iwi and hapū have an evolving and ongoing role in the management of the park. Be it in decision-making processes for use of cultural materials, the reintroduction of previously-present bird species, the consideration of concessions which may impact on cultural values or the development of further park guidelines or strategies, iwi will be involved.[47]

The other two park management principles that mention Māori include the goal of protecting the 'ancestral, historical, cultural and archaeological' heritage of the park, and the goal to cater for the values of 'park partners,' including voluntary organisations, research institutes and Māori.[48] The Management Plan also reproduces the same list of Treaty Principles as appears in the CMS. Though there was some criticism of the conservancy's policies in the National Park inquiry, claimants mainly objected to the practice of the relationship.

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[45] DOC Tongariro-Taupō Conservancy, *Tongariro National Park Management Plan*, 39.
[46] Ibid., 40.
[47] Ibid., 41.
[48] Ibid., 42, 43.

The Relationship in Practice

In practice, in the conservancy, consultation with Māori works at formal levels, through organised meetings and solicited submissions; and at informal levels in the friendships between individuals. Formal consultation occurs with the Tūwharetoa Māori Trust Board (the Trust Board) at liaison committee meetings, and at the meetings between the fisheries managers and the Trust Board. Consultation with hapū occurs at scheduled meetings on marae, and via emails to Māori authorities and representatives. The conservation board is supposed to function as one method of consultation with 'the community' (including Māori) but the effectiveness of this appears to vary depending on the particular individuals on the board, both Māori and Pākehā.[49] Conservation board members are not, by statute, supposed to represent particular groups, but to function as individuals in a body broadly representative of the wider community. Pou Kura Taiao also have a formal role. The Tongariro-Taupō Pou Kura Taiao at the time of my research described his responsibility as being "to develop positive relationships between DOC and iwi kāinga."[50]

One of the Tongariro/Taupō Conservancy managers described the formal consultation system in this way:

> We meet and discuss interests, share information. I'd probably say there were three levels of consultation: the management plans – big things; major developments, for example ski developments at Whakapapa; a whole cluster of things all under concessions. For these we do have some protocols with Tuwharetoa, but not with others. These are for scientific research permits, guiding, filming applications and so on.[51]

Another manager described three avenues for consultation with Ngāti Tūwharetoa: the Paramount Chief, the Trust Board, and hapū. This manager explained that there are about thirty hapū, some of them more obvious than others, and there are new groups emerging and breaking off from other groups all the time.[52]

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[49] A Departmental review of conservation boards was conducted in 2007 that made this finding, among others. The Tongariro-Taupō Conservation Board was not one of the case studies, but several board members made observations in interviews that accorded with the findings of the review. Carla Wilson, "Role and Effectiveness of Conservation Boards as a Community Voice in Conservation Management," in *Science for Conservation Series, no.273* (Wellington: Department of Conservation, 2007), 28; Interview with Conservation Board Member 5, May 3, 2007; Interview with Conservation Board Member 6, May 18, 2007.

[50] Interview with Tongariro-Taupō Pou Kura Taiao, March 2, 2007. Iwi kāinga literally means "home people ." It is used in the same sense as tāngata whenua.

[51] Interview with DOC Manager 5, March 15, 2007.

[52] Tongariro-Taupō Conservator, in interview with Tongariro-Taupō Conservator and DOC Manager 2, January 18, 2007.

Managing relationships with these sometimes shifting identity groups, which often do not have clear representatives, is something with which DOC struggles.

> KM – *So who are the contact people? How are they found, or chosen?*
>
> DOC manager – Well really from what I understand we work with the Trust chairperson but we realised that doesn't always work. But we don't know who has the official mandate.[53]

In another interview two DOC managers discussed the 'in-house' disagreements that arose between hapū, agreeing that DOC could not take the role of deciding who is right, and as a result is obliged to consult with every group or person who claimed tāngata whenua status. Technically it is the Pou Kura Taiao's role to advise in these situations. One person, with their own whānau, hapū and iwi affiliations, cannot be an effective judge or mediator of every dispute in an entire conservancy, however. In an interview two DOC managers, one senior and one supporting, suggested it is difficult for a Pou Kura Taiao to adjudicate matters outside of their own hapū.[54]

The role of the two trust boards can also be problematic. One manager said that the Ngāti Rangi Trust Board was 'not working very well' at the time of our interview, and another described the Tūwharetoa Māori Trust Board as not being fully accepted by the hapū it is supposed to represent.[55] In an individual submission to the inquiry the secretary of the Tūwharetoa Māori Trust Board described his frustration at the board being treated as a "one stop shop" when in many cases it was more appropriate for DOC to consult directly with particular hapū or marae.[56] A former secretary expressed his opinion that the board was making a transition into being a purely financial body, and that better representative institutions were in development.[57]

Alongside the formal processes of consultation, much informal consultation goes on in relationships between individuals: the managers in the Conservancy and particular tribal members whom they know well. One of the area managers mentioned two particular Māori individuals, one from Tūwharetoa and one from Ngāti Rangi.

> We have [Tūwharetoa individual's name], of course, he makes contact really natural, but it's not formally organised.[58]

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[53] Interview with DOC manager 5.
[54] Interview with Tongariro-Taupō Conservator and DOC Manager 2.
[55] Interview with DOC Manager 5; Interview with Tongariro-Taupō Conservator and DOC Manager 2.
[56] Brief of Evidence of Te Hokowhitu A Rakeipoho Taiaroa, Wai 1130, #G45. October 4, 2006, paragraph 10, 2-3.
[57] Stephen Asher in Draft Transcript of National Park Inquiry Hearing 7, Wai 1130 #4.1.11, (Papakai Marae, 11-13, 16-20 October 2006), 11-2.
[58] Interview with DOC manager 5.

...

> Well I contact [Ngāti Rangi individual's name] all the time, informally. And he does all the concession application comments.[59]

It is these informal relationships where much of the interaction takes place, or at least begins. Through these personal relationships DOC staff are invited to gatherings such as *tangi* (funeral ceremonies that are typically larger and longer than Pākehā funerals), where many matters are discussed and decided upon.[60] They also act informally as brokers, talking to other tribal members about issues raised in conversations with DOC staff, and vice versa.[61]

The importance of these relationships between individuals makes relationships quite vulnerable to the movements of those individuals. One of the few instances of ongoing joint decision making between DOC and Māori in the Tongariro/Taupō Conservancy was the Karioi Rāhui, a management agreement between DOC and Ngāti Rangi over a 5,300 hectare section of forest bordering the park on the southwest. In early 2007 this project was described as being "in a stuttery phase," because one of the six members of the management board had died, and another had moved on.[62] In the inquiry the turnover of DOC staff was criticised as it meant that new staff had to constantly be "trained" to know about the local people and local issues.[63]

The Karioi Rāhui is guided by a memorandum of agreement, signed in 1996, which lays out the goals of the agreement to protect water quality, indigenous species, their beech-podocarp forest habitat, and "the traditional conservation ethic of Ngāti Rangi iwi."[64] There is also a protocol between DOC and Ngāti Tūrangitukua, a hapū of Ngāti Tūwharetoa, resulting from the Turangi Township settlement.[65] Other groups sought similar arrangements but these did not progress. This will be discussed further in chapter three.

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[59] Ibid.
[60] Interview with three members of Ngāti Rangi, July 7, 2007.
[61] Interview with Conservation Board Member 3, March 28, 2007.
[62] Interview with DOC manager 5.
[63] Brief of Evidence of Keith William Paetaha Wood, Wai 1130, #A64, February 10, 2006, paragraph 63, 13.
[64] Memorandum of Agreement between the Department of Conservation, Tongariro/Taupō Conservancy, and the Ngāti Rangi Trust, December 5, 1996, Paragraph 13(a)-(d), 6.
[65] *Ngati Turangitukua Claims Settlement Act*, 1999, section 17.

The literature on co-management in New Zealand

Co-management literature has been described as "untidy."[66] This is a product of the wide range of co-management situations in existence, as well as the multitude of disciplines that have an interest in how they function. Geographers, historians, anthropologists and legal scholars are just a few of the kinds of writers who contribute to the literature. Among these writers there is little agreement about what co-management aims to achieve, whether it works, and how best to analyse it or measure its success. Over this and the following two chapters I draw out some of the threads of these writers' arguments and approaches.

There is no generally accepted definition of co-management in the international literature focusing on relationships between governments and indigenous or local peoples in natural resource management.[67] The various definitions usually refer to a relationship between a state agency and a local community or organisation over the management of natural resources, and often but not always describe co-management as involving formal institutional structures. One of the broad and commonly used definitions is anthropologist Evelyn Pinkerton's: "[p]ower-sharing in the exercise of resource management between a government agency and a community organization or stakeholders."[68] In the international literature the term co-management is used to cover a range of different measures, from consultation of the community group by the state party, to situations involving legal power-sharing over the resource.[69]

In New Zealand the term "co-management" is generally used to refer to stricter, institutionalised systems of power-sharing. Brad Coombes, a New Zealand geographer, defines co-management as institutional structures for power sharing and dialogue among resource users and managers, who negotiate among themselves an equitable

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[66] C. Ansell and A. Gash, "Collaborative Governance in Theory and Practice," *Journal of Public Administration Research and Theory* 18, no. 4 (2008): 2.
[67] Jules Pretty and David Smith, "Social Capital in Biodiversity Conservation and Management," *Conservation Biology* 18, no. 3 (2004): 634.
[68] Evelyn Pinkerton, "Translating Legal Rights into Management Practice: Overcoming Barriers to the Exercise of Co-Management " *Human Organization* 51, no. 4 (1992): 331. Pinkerton's definition is cited, for example, in P.O'B. Lyver, "Co-Managing Environmental Research: Lessons from Two Cross-Cultural Research Partnerships in New Zealand," *Environmental Conservation* 32, no. 4 (2005); and in Derek Armitage, Fikret Berkes, and Nancy Doubleday, "Introduction," in *Adaptive Co-Management: Collaboration, Learning and Multi-Level Governance*, ed. Derek Armitage, Fikret Berkes, and Nancy Doubleday (Vancouver: UBC Press, 2007), 3.
[69] See, for example, Fikret Berkes, Peter George and Richard J. Preston, "Co-management: the evolution of theory and practice of the joint administration of living resources," *Alternatives,* 1991, 18, no. 2 (1991): 12–18.

sharing of power, responsibilities and benefits.[70] There are few instances of co-management, thus defined, in New Zealand, and New Zealand writers have tended to look at the prospects and prerequisites for future establishment of co-management arrangements, rather than assessment of the existing regimes.[71] Some of these scholars, however, have made observations on what collaboration can achieve, the obstacles that face it, and what factors are necessary for its success. These will be briefly reviewed here, in order to introduce the New Zealand context, before I look more closely into how these relationships can best be understood and analysed.

In 1997 Todd Taiepa and others wrote an article on co-management in New Zealand protected areas. They argued that there was a need for Māori and Pākehā to work together on the pressing environmental problems of predators and habitat deterioration in New Zealand, as both groups are politically and economically powerful sections of New Zealand society, and both had histories of causing damage to the environment. They also argued that collaboration was not just an important practical measure but "a fundamental constitutional requirement of the Treaty of Waitangi."[72] A third argument for co-management they raised is that it is likely to produce better environmental management on the basis that "[t]he local tribal social structures and detailed knowledge of the local environment held by indigenous peoples make them natural 'grass roots' organizations to become effective co-managers…" although they acknowledged that the research on the effectiveness of co-management was thin at their time of writing.[73]

The Taiepa team commented on why they thought co-management had not yet been implemented. They argued that there was no "top down" legislative barrier to establishing co-management, but that there were other obstacles hampering its

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[70] Brad L. Coombes and Stephanie Hill, "''Na Whenua, Na Tuhoe. Ko D.O.C. Te Partner'' Prospects for Comanagement of Te Urewera National Park," *Society & Natural Resources* 18 (2005): 136. The second part of Coombes and Hill's definition follows Alfonso Peter Castro and Erik Nielsen, "Indigenous People and Co-Management: Implications for Conflict Management," *Environmental Science & Policy* 4(2001): 230.

[71] See for example Todd Taiepa et al., "Co-Management of New Zealand's Conservation Estate by Maori and Pakeha: A Review," *Environmental Conservation* 24, no. 3 (1997); Coombes and Hill, "''Na Whenua, Na Tuhoe. Ko D.O.C. Te Partner'';" Brad Coombes, "Contested Conservation Legacies and the Co-Option of Māori Resistance through Co-Management," *Tihei Oreore: Monograph Series - Policy Seminars.* 1, no. 2 (2005); Jacinta Ruru, "A Maori Right to Own and Manage National Parks?," *Journal of South Pacific Law* 12, no. 1 (2008); Gail Tipa, "Co-Management: An Indigenous Perspective," in *Living Together: Towards Inclusive Communities*, ed. Michelle Thompson-Fawcett and Claire Freeman (Dunedin: Otago University Press).

[72] Taiepa et al., "Co-management of New Zealand's Conservation Estate by Maori and Pakeha: A Review," 237.

[73] Ibid., 237-238.

development.[74] These obstacles included differing philosophies (preservation versus sustainable use); a lack of working models; a lack of resources; a lack of trust on the part of conservation NGOs; and an institutional inertia and unwillingness, on the part of DOC, to share power. They argued that having a good communication process was very important and recommended holding marae discussions, to build trust and communication skills. The Taiepa team saw a need to establish guiding principles for the development of co-management structures, and nominated three such principles: the Treaty; the acceptance of both "western scientific knowledge" and "traditional ecological understanding;" and community empowerment.[75]

Several of these points have been developed by later writers. Geographer Mark Prystupa also emphasised the reluctance of conservation non-governmental organisations (NGOs), and the Pākehā public more generally, for the conservation estate to be used in the settlement of Treaty claims, as a key obstacle in the campaign to establish co-management over the South Island lake Te Waihora/Lake Ellesmere in the mid 1990s.[76] Although there is evidence that some of the key conservation lobby groups have changed their tune since then, the role of such interest groups and the wider public is a very important shaping force on the development and ongoing process of DOC-Māori relationships.

More recently, geographer Gail Tipa has nominated a set of preconditions for the establishment of co-management in New Zealand. Like the Taiepa team, she noted the importance of both parties in making a commitment to understanding each other's perspectives, the recognition of property rights, capacity-building and adequate resourcing. She also argued for a greater degree of conceptual clarity and agreement on a range of issues, such as the definition and structure of co-management, the nature of Treaty obligations, and the difference between Treaty and public participation obligations.[77] Tipa criticised the vagueness of the concept of co-management, pointing out that it can be used to describe many different levels of power-sharing and resource-provision – and argued that "[t]he empowerment of indigenous communities … requires

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[74] Ibid., 239-242.
[75] Ibid., 242-3.
[76] M.V. Prystupa, "Barriers and Strategies to the Development of Co-Management Regimes in New Zealand: The Case of Te Waihora," *Human Organization* 57, no. 2 (1998).
[77] Tipa, "Co-Management: An Indigenous Perspective," 167-8. Also Tipa, "Indigenous Communities and the Co-Management of Natural Resources: The Case of New Zealand Freshwater Management," (PhD thesis, University of Otago, 2003), 208.

the clear articulation of what, from an indigenous perspective, might constitute effective co-management."[78]

Concerns about the prospect of co-management in New Zealand national parks have also been raised by Brad Coombes and Stephanie Hill, who looked at Te Urewera National Park as a case study. Coombes and Hill argue that although co-management has positive potential, there needs to be a desire for it among indigenous people if it is to succeed. They suggest that it is unlikely to work if offered as "a token resolution of land grievances."[79] The question of the underlying ownership of the land is a particularly contentious issue. At a conference in 2009 Jacinta Ruru, a legal academic who has written several articles on Māori rights in the conservation estate, said:

> I wonder if this is going to create a sustainable future, for us … our future generations, if we can't go to that negotiation table and at least talk about this title being returned to iwi. And is it really something to fear?[80]

Tipa, Ruru, Coombes and Hill all caution that co-management is not a panacea for Māori grievances, and that the historical issues between the government and Māori, need to be addressed before relationships can progress.

Analysis of the relationships between DOC and Māori has also been undertaken by public service agencies and the Tribunal. In 1998 the Ministry for Māori Affairs (Te Puni Kōkiri) conducted a review into the Department of Conservation's relationships with Māori. The review's main findings were that DOC had made a genuine effort to build good relationships with Māori, and had policies, strategies and operational processes to support their efforts. The review included a series of interviews with "key stakeholders," described as Māori who have "a key interest in conservation issues," many of whom had regular contact with DOC.[81] The interviewees were from five different conservancies. The results of those interviews were less positive, and indicated that DOC's success in building relationships was limited and varied between groups:

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[78] Ibid., 156-60, 155.
[79] Coombes and Hill, "''Na Whenua, Na Tuhoe. Ko D.O.C. Te Partner''," 135.
[80] Jacinta Ruru, "Maori owned parks: should iwi be given title to specific parks?" (paper presented at The Future of Public Conservation Lands and Waters, Otago University, Dunedin, 10 July 2009).
[81] Te Puni Kōkiri, Monitoring and Evaluation Branch, *Review of Department of Conservation Te Papa Atawhai Service Delivery to Māori: Key Stakeholder Interviews* (Wellington: Te Puni Kōkiri, 1998), 11. The overall review was more specific: "a sample of external Māori stakeholders who represented a wide range of groups and organisations including: iwi; land trusts; hapū; whānau; groups representing several iwi; and groups representing sector interests for a particular iwi or group of iwi. Te Puni Kōkiri, Monitoring and Evaluation Branch, *Review of the Department of Conservation Te Papa Atawhai: Service Delivery to Māori*, (Wellington: Te Puni Kōkiri, 1998), 9.

> Two stakeholder groups have very good relationships with the Department. These stakeholders are also actively involved with the Department's policy and planning. However, in most instances interviewees viewed their relationship as poor, but improving over time. In cases where progress had been made, it was claimed that iwi and hapū had been proactive in approaching and seeking contact with the Department.[82]

The researchers recorded that many of their interviewees thought DOC had more land that it needed or could maintain, and that it was generally resistant to compromise with Māori interests in the conservation estate, especially at national office. Almost all of their interviewees wanted iwi and hapū to be more involved in the management of the conservation estate. The researchers also noted that progress of Treaty claims across the country was at the forefront of their interviewees' minds, writing "[i]t was almost impossible to talk to many of the interviewees about DOC without issues related to claims and settlements being raised."[83] The researchers argued that claims had shifted Māori aspirations from co-operative management of areas of the conservation estate with DOC, to ownership and independent control of the areas contested.[84]

Four years later, in 2002, Te Puni Kōkiri conducted a follow-up review, which concluded that DOC had "made significant progress" in developing relationships with Māori, with new policies, Māori employment targets, and the implementation of a training programme in Treaty issues and Māori culture for new staff. Two of the areas they highlighted for future work were the incorporation of Māori perspectives in national policies and processes, and the strengthening of the "delivery line" of DOC's operations as a channel for Māori issues.[85] Stakeholder interviews were not undertaken as part of this second review.

New Zealand writers have argued that Māori are seeking to achieve something beyond having their voice heard, or contributing towards better conservation management of the resources in question. There are historical justice and ownership issues that lie behind Māori desire for "greater involvement," which some writers allege DOC fails to properly acknowledge or address. My research supports these findings, and goes into detail about the different expectations DOC and Māori have for their relationships. I

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[82] Te Puni Kōkiri, *Key Stakeholder Interviews*, 12.
[83] Ibid., 21.
[84] Ibid.
[85] Te Puni Kōkiri, Monitoring and Evaluation Branch, *Follow up Review of the Department of Conservation's Relationships with Māori / Te Arotake o Muri mō Te Āhua o Te Hononga i Waenga o Te Papa Atawhai rāua ko te Māori*, (Wellington, Te Puni Kōkiri, 2002), 8. The "delivery line" is the chain of command from the Director-General, through the regional managers to conservators, area managers, and frontline staff. See Figure 1.

also expand upon the Taiepa team's observation of an 'institutional inertia' obstructing the development of relationships, and looks at some of the historical sources of that inertia. My research also looks into the question of how Tribunal claims are affecting relationships on the ground, which few researchers have examined so far.

Chapter Two: the Question of Success

Behind the idea of problems and strengths is an idea of progress. A problem is an obstacle to progress, and a strength facilitates it. In order to understand what constitutes a problem and what constitutes a strength in co-management relationships it is therefore important to investigate the ideas around what these relationships are for, or how people envisage success. This chapter investigates the ideas about the objectives of co-management that exist in international environmental agreements and the academic literature on collaborative management of natural resources, and which of them are favoured in New Zealand conservation policy and other statements about the relationship at Tongariro. I conclude that DOC and Māori have different ideas about the objectives of their relationship, and this chapter discusses those differences and how important they are. I propose a definition of success that can accommodate the fact that DOC and Māori have different goals, and I argue that having different objectives for the relationship is not a fatal blow for the prospects of working together, but it needs to be carefully negotiated.

How to provide for success is a predominant question in the co-management literature. This implies that those writers have in mind a definition of "success," although they do not always make this definition clear. Writers who do make their definitions of success explicit tend to identify both resource protection and community empowerment as goals, and either emphasise the importance of one over the other, or stress both. Environmental management writer Peter Wilshusen and his colleagues have described a division of debate into "pro-people" and "pro-nature" camps, with little effort to find a "practical middle ground."[1] The debate is more complex than this, however. Among the arguments for community and indigenous peoples' involvement in management, in both policy and academia, there seem to be four broad subcategories, though they are mainly used in combination or confusion with each other. The assumptions behind each argument are different, and importantly so – how co-management is structured and what people expect of it are largely dependent upon what the parties involved believe its objectives to be.

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[1] P.R. Wilshusen et al., "The Road Less Traveled: Towards Nature Protection with Social Justice " in *Contested Nature: Promoting International Biodiversity with Social Justice in the Twenty-First Century*, ed. P.R. Wilshusen, et al. (New York: New York Press, 2003), 260.

It is important to make a brief note about the categories of 'local' and 'indigenous' peoples. Often, and particularly in international policy, these groups are lumped together in the phrase "local and indigenous people," implying they are distinct categories with, nevertheless, identical rights or needs.[2] Most international agreements do not provide a clear definition of either local or indigenous peoples, or the difference between them. There are political implications to the use of language here. The words, and the definitions which go with them, carry particular inferences about why these groups should be involved in management, and what kind of rights and responsibilities they possess. Anthropologist Mac Chapin gave an example of the effects of language use in an article written as a "challenge to conservationists" in 2004:

> …the terms "indigenous" and "traditional" have largely dropped out of the discourse of the large conservationist NGOs—replaced mainly by "marginalized" or "poor." (The more neutral terms "rural" and "local" have also spread more widely in the literature and are commonly used by both sides.) This linguistic shift robs the dignity of indigenous peoples. Who is interested in saving the culture of marginalized people? What is the value of the traditional ecological knowledge of the poor? People who are viewed as having no distinctive culture, assets, or historic claims to the land they occupy end up being, in a very real sense, a people with no value.[3]

The elision of differences between local people and indigenous people has also been criticised by the International Work Group for Indigenous Affairs (an international NGO which advocates on behalf on indigenous peoples. On their website they note "Indigenous peoples can … not sufficiently be addresses [sic] as part of a common group of poor and vulnerable peoples and/or as 'local and indigenous communities'."[4]

Ashish Kothari, a scholar employed by the World Conservation Union, acknowledged these politics, without actually separating the two categories, in an article appearing in *Parks* (a journal designed for park managers across the world), in 2006:

> For the sake of convenience and without prejudice to the importance of recognising the special status of indigenous peoples, the term

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[2] Some examples of international environmental policies that use 'indigenous and local' as a single category are Ramsar Resolution VII.8, and the associated Annex: http://www.ramsar.org/cda/en/ramsar-documents-resol-resolution-vii-8/main/ramsar/1-31-107%5E20736_4000_0__); the Convention on Biological Diversity, preamble and article 8(j): http://www.cbd.int/convention/text/; … The IUCN runs a "Theme on Indigenous Peoples, Local Communities, Equity and Protected Areas" (TICELPA), and recognises a kind of protected area known as an Indigenous and Community Conserved Area (ICCA): which are run by either local or indigenous groups.

[3] Mac Chapin, "A Challenge to Conservationists," *Worldwatch* November/December 2004, 27.

[4] International Working Group on Indigenous Affairs website, http://www.iwgia.org/environment-and-development/sustainable-development, viewed 23 October 2012.

> 'communities' is used to denote both indigenous peoples and other long-established local communities.[5]

Because I am analysing a range of policies (international environmental policies and New Zealand conservation policies), and academic writings (on co-management and on indigenous rights and relationships to do with the environment) that use different definitions of varying sophistication to describe "local" and "indigenous" people it is not helpful to offer precise definitions here, but it is useful to note that indigenous people seem to be viewed as a subcategory of local people, in that the arguments that apply to locals also apply to indigenous peoples, but the arguments that apply to indigenous people do not always apply to locals.[6] 'Locals' or, interchangeably, 'the community,' for the purposes of this review, could be broadly defined as the people living in the area on a permanent or semi-permanent basis. 'Indigenous peoples' could be described very loosely as people with a continuing historical connection to the land. In the following review I use "locals" or "the community" for arguments that apply to both groups, and "indigenous" for the arguments that only apply to indigenous people.

The four arguments

One argument for involving local people is that it is necessary for better management, either because those locals are politically active and may disrupt management if they are not brought on board as allies, or because conservation is a huge task and many hands are needed in order to achieve it. A second argument in favour of greater local involvement is that locals have special knowledge of the environment, born of close and often lengthy experience, and can enhance conservation by contributing their expertise. A third argues that governments have a moral obligation to include locals in the management of resources, whether or not their involvement leads to better conservation, and resource protection should be balanced with their interests. Finally there is an argument that focuses solely on rights, mainly pertaining to indigenous peoples rather than locals, and argues that these take precedence over conservation management, which is sometimes claimed to be a poorly conceived and exclusive system in the first place. The four arguments are summarised below:

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[5] Ashish Kothari, "Community Conserved Areas," *Parks*, 16, no. 1, (2006): footnote 2, 3.
[6] This nesting is explicit in some policies, e.g. Agenda 21, 25.14(c): "…local populations, including women, youth, children and indigenous people…" and the Rio Declaration, principle 22: "Indigenous people and their communities and other local communities…"

1. **Necessity:** resource protection cannot be achieved without community involvement
    a. because locals will be disruptive (accidentally or otherwise) if not informed and brought on board; and/or
    b. because conservation is a large and complex task, and requires a large and diverse body of people to achieve it.
2. **Enhancement:** participation leads to better resource protection because local people have special skills and/or knowledge. This argument is sometimes extended to argue for full devolution to locals on the basis that locals are the best managers of the resource.
3. **Protection and participation:** a balance should be negotiated between resource protection and community involvement, whether or not involvement leads to better resource protection.
4. **Indigenous rights:** indigenous people have rights to exercise control over the resource. (Protection of the resource is secondary, irrelevant, or considered an ideologically flawed concept).

In practice these arguments tend to be tangled together. Most collaborative initiatives draw on more than one of these arguments. They may officially state they have objectives which in practice they do not follow. Different parties in the collaboration may be pursuing different objectives. Additionally it is often hard to tell which of these ideas is being invoked. The distinction between the first and third arguments can be particularly hard to gauge. An uncertainty as to whether community participation is being sought out of a sense of necessity, or the recognition of a right to participate, however, is an uncertainty about the nature of the relationship, so it remains an important difference, if one that is often difficult to determine.

The uses of these arguments are now reviewed in turn, with particular attention to how they are used and criticised in the New Zealand context. This review also looks at the ideas of success contained in international agreements regarding indigenous people and environmental management. New Zealand is a signatory to several international conservation agreements, many of which have addressed the importance of involving indigenous, local and tribal people in the management of natural resources. Although most agreements are non-binding on the state party signatories, they are part of a moral

pressure exerted by the international community on national politicians.[7] The historian Ken Coates has argued that although events in New Zealand have determined the precise shape of New Zealand policies regarding Māori, the pressure to establish those policies has predominantly come from overseas.[8] New Zealand signed the Convention on Biodiversity and the Framework Convention on Climate Change, both binding agreements. New Zealand also signed the non-binding agreements Agenda 21, a plan for sustainable development; the Forest Principles, a set of codes for the management of forests, and the Rio Declaration on Environment and Development. All of these agreements made reference to indigenous people, most relying on the necessity and enhancement arguments for indigenous involvement. New Zealand more recently signed up to the United Nations Declaration on the Rights of Indigenous Peoples, which contains several clauses advancing a rights-based argument for indigenous control over their traditional resources and territories.[9]

In New Zealand the enhancement argument is used much less often than it is in international literature, especially in government policy. DOC tends to rely on the necessity and protection and participation arguments in its action policies, though it frames them as Treaty obligations. Māori, on the other hand, heavily emphasise rights arguments. They also make use of enhancement arguments, but these are usually supplementary to or entwined with the main argument that they have a special right to be involved in land management.

1. Necessity

This perspective, in which participation is a necessary tool in order to achieve conservation goals, has been identified by several writers as the main reason public agencies seek community participation. These writers identify changing politics, and an increasingly well-informed and active public, ready to rebel against imposed decisions with which they disagree, as prompting this change.[10] The shift to a participatory style of management is interpreted as necessary, as the old, exclusionary style no longer

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[7] Catherine J. Iorns Magallanes, "International Human Rights and Their Impact on Domestic Law on Indigenous Peoples' Rights in Australia, Canada, and New Zealand," in *Indigenous Peoples' Rights in Australia, Canada and New Zealand*, ed. Paul Haveman (Oxford: Oxford University Press, 1999), 245.
[8] Ken Coates, "International Perspectives on Relations with Indigenous Peoples," in Ken S. Coates and Paul McHugh, *Living Relationships, Kōkiri Ngātahi: The Treaty of Waitangi in the New Millenium* (Wellington: Victoria University Press, 1998), 23.
[9] Articles 18, 24, 26, 29, 31 and 32 in particular.
[10] Julia M. Wondolleck and Steven L. Yaffee, *Making Collaboration Work: Lessons from Innovation in Natural Resource Management* (Washington DC: Island Press, 2000), 8-9.

works.[11] Relationships, in this perspective, are a strategic necessity, a way of maintaining the old goal of resource protection, in a new world. Community groups are potential allies or potential saboteurs, with a latent power of protest that the public agency attempts to defuse. The benefits for the community that come from involvement are sometimes noted but are not the key concern:

> Collaboration can lead to better decisions that are more likely to be implemented and, at the same time, better prepare agencies and communities for future challenges. Building bridges between agencies, organizations, and individuals in environmental management is not an end in itself. Rather, it is a means to several ends: building understanding, building support, and building capacity.[12]

In international conservation policy statements it is often simply stated that participation is necessary for better resource protection, without explaining why this is so. This statement from Agenda 21, an agreement outlining a plan for sustainable development, is an example:

> Critical to the effective implementation of the objectives, policies and mechanisms agreed to by Governments in all programme areas of Agenda 21 will be the commitment and genuine involvement of all social groups.[13]

In New Zealand conservation policy this perspective, and the theory behind it, is clearer:

> Effective conservation is dependent on the level of support and understanding of all New Zealanders. They are engaged as individuals, in their communities, as neighbours, in iwi and hapü, in conservation and recreation groups, as well as farmers, foresters, fishers, scientists, businesspeople, and people working in local government and other public agencies. The conservation task is large. Effective partnerships between the Department, people and organisations can enhance the achievement of conservation outcomes by all parties.[14]

Conservation is seen as a big job, which needs as many hands as possible. The policy also makes clear that relationships between DOC and wider community are specifically intended to "enhance conservation," rather than being intrinsically worthwhile.[15]

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[11] Fikret Berkes, "Rethinking Community-Based Conservation," *Conservation Biology* 18, no. 3 (2004): 622.
[12] Wondolleck and Yaffee, *Making Collaboration Work*, 23.
[13] Agenda 21, 23.1.
[14] DOC, *Conservation General Policy*, 18.
[15] Ibid.

These ideas are mirrored in the Tongariro National Park Management Plan, which also states that encouraging compliance with park rules is another objective of community engagement:

> For a Government department working on behalf of the community, good communication and relations are vital. Community members and tāngata whenua assist the department in many ways in the management of the park, including contributing volunteer work or resources through sponsorship and providing advice and guidance on conservation matters. The park is a complex area to administer and community support is important to ensure that compliance with policies and regulations is achieved. Good community relations will also assist the department in gaining community trust and responding, where appropriate, to the aspirations of the community.[16]

This quote is also a good example of the multiple arguments that are used in the justification of community involvement in conservation management. The community is seen here as a potential source of labour and funding, a potential source of expertise, a potential obstacle, and a group that the agency is bound to represent.

The argument for participation for better resource protection is, at its core, a 'biocentric' or 'pro-nature' perspective, and relies on the premise that increased participation, does, in fact, lead to better resource protection. This implicit premise is attended to more closely in the academic literature on collaborative management. The ecologist Fikret Berkes and his colleagues, for example, argue that conservation does not exist as a separate concern from social issues. They describe a "socioecological system" in which it does not make sense to exclude the community from the environment in which they live or otherwise operate.[17] According to these writers, developments in ecology have questioned former assumptions about the concept of equilibrium and simple cause-and-effect analyses of environmental change. A greater understanding of the complexity of ecological systems has led to a demand for more sophisticated management responses, at multiple levels. This has made the job of environmental management more difficult, requiring more input from more individuals to address the challenges.[18] Some co-management writers argue that it is impossible for a single agency to adequately handle the challenges of modern environmental management, and partnerships with multiple agencies and groups are essential.[19]

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[16] DOC Tongariro-Taupō Conservancy, *Tongariro National Park Management Plan*, 84.
[17] Berkes, "Rethinking Community-Based Conservation," 623.
[18] Fikret Berkes, Johan Colding, and Carl Folke, eds., *Navigating Social-Ecological Systems: Building Resilience for Complexity and Change* (Cambridge.: Cambridge University Press,2003), 1.
[19] Wondolleck and Yaffee, *Making Collaboration Work*, 21.

The perspective that community participation is necessary for resource protection attracts criticism from two angles. Some writers in the co-management literature question the validity of the assumption that the participation of the wider community in resource management always leads to better resource protection. Others argue that participation is a right independent from its connection to better conservation outcomes. In the former camp, writers disagree with the premise that greater collaboration leads to better conservation outcomes, and argue instead that it is costly in terms of resources, and allows obstructive interest groups to stymie progress:

> Collaborative processes tend to be intense and time consuming. Negotiations attract those with vested interests, particularly business interests that tend to dominate the process. Those without special expertise may find themselves at a disadvantage, and those who cannot commit to the considerable time entailed are excluded.[20]

Others have claimed that there is insufficient evidence as to the benefits of co-management. Some argue that although co-management *can* produce benefits to resource management, it does not always do so, and it is important to isolate the variables which assist or obstruct these positive effects.[21]

Among those who see participation as a right independent of conservation outcomes, the participation for better resource protection argument is criticised as representing a cold-hearted approach to the rights and interests of indigenous or local people as merely problems to be managed away. Anthropologist Peter Brosius summed up part of the message that indigenous groups brought to the 2003 World Parks Congress like this:

> Their message was that indigenous and local communities must represent something other than a "transaction cost," [and] that threat assessments that classify their landuse practices as disturbances are unacceptable...[22]

In New Zealand, co-management writers have argued that the pro-nature perspective takes inadequate account of the historical justice issues between the government and Māori. Brad Coombes and Stephanie Hill have noted that there is a tendency to assume that adjusting the management of a resource in line with community opinion is sufficient provision of justice for those previously excluded.[23] Coombes and Hill argue that when better environmental management is the primary focus of co-management

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[20] Michael McClosky, "Local Communities and the Management of Public Forests," *Ecology Law Quarterly* 25(1999): 628.
[21] Berkes, "Rethinking Community-Based Conservation," 624.
[22] J. Peter Brosius, "Indigenous Peoples and Protected Areas at the World Parks Congress," *Conservation Biology* 18, no. 3 (2004): 611.
[23] Coombes and Hill, "''Na Whenua, Na Tuhoe. Ko D.O.C. Te Partner''," 138.

there is little space for questioning the status of the land, or the potential return of title to the descendents of its original inhabitants.[24]

In the National Park inquiry Māori very seldom used this argument to advocate for greater involvement. One claimant suggested that if DOC was better about including Māori in environmental management then DOC's job would be easier:

> In my view the objectives of the National Park should be to focus on the environment but the environment as I've said should include the social environment of the tangata whenua. If that was the case, there would be fewer obstacles and in fact DoC would receive better support due to the inclusion of hapu in the direct management of the park.[25]

Elsewhere in his submission, however, this claimant made it clear he believed the key argument for his hapū's involvement in management was their special connection to the land:

> The hapu are part of the Park and I do not understand why we are not part of the management process. We are definitely part of the life blood of the land and it is extremely narrow minded to exclude hapu for the management and running of the park and not in its best interests.[26]

A very strong feature of claimant submissions was that simply being consulted for the benefit of conservation management failed to fulfil their expectations for recognition and involvement.

2. Enhancement

In this view, community participation brings useful skills and knowledge into the management system. Local and indigenous people are seen to possess what is variously referred to as local knowledge, traditional ecological knowledge, or indigenous knowledge (and various further permutations), and the access to this knowledge that is gained from the inclusion of local groups is thought to provide conservation benefits.

This perspective is prevalent in international policy. It is the starting point for indigenous involvement in the Convention for Biological Diversity, a binding agreement that New Zealand has signed. Article 8(j) states that a signatory will, "as far as possible and as appropriate":

> [s]ubject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local

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[24] Ibid.
[25] Brief of Evidence of Graeme Everton, Wai 1130, #G36, September 29, 2006, paragraph 40, 10.
[26] Ibid., paragraph 36, 9.

> communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.[27]

The Rio Declaration, a set of principles for sustainable development, also identifies indigenous people's special knowledge as the reason for their important role in environmental management and development. Its twenty-second principle states: "[i]ndigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices."[28]

The possibility that the integration of indigenous knowledge into management would *not* lead to better environmental protection is sometimes raised as a criticism of these arguments. These writers would have it that local knowledge should, at the very least, be subject to 'proper' scientific testing, before it is used in management.

> We take strong issue with [the] suggestion that the "primary goal" of any study that involves the application or collection of LEK [local ecological knowledge] should be to "empower communities." … [T]he purpose of collecting LEK is not to satisfy political agendas or appease the politically correct, socioeconomic rhetoric that continues to plague discussions of LEK. The purpose of collecting LEK in a wildlife management context is to seek out and apply any sources of reliable data, including information collected independently from western science, to help make more informed wildlife management decisions.[29]

Another criticism of the way that indigenous knowledge is used in policy is that those policies tend to assume that the people who possess traditional ecological knowledge are willing and happy to share it. Some writers are concerned about exploitation of indigenous peoples for their knowledge or labour, and demand that full, prior and informed consent of indigenous people is received whenever their knowledge is used. The argument for involvement due to special knowledge also occasionally attracts criticism for being paternalistic, or forcing indigenous people into a niche in which they must carry out "traditional" practices, thus artificially freezing cultural behaviour by disallowing adaptation and evolution. Lastly, this approach has been criticised for

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[27] Convention on Biological Diversity, http://www.cbd.int/convention/articles/?a=cbd-08.
[28] Rio Declaration of the United Nations Conference on Environment and Development, June 14, 1992, http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163.
[29] Grant Gilchrist and Mark L. Mallory, "Comparing Expert-Based Science with Local Ecological Knowledge: What Are We Afraid Of?," *Ecology and Society* 12, no. 1 (2007), http://www.ecologyandsociety.org/vol12/iss1/resp1/.

picking and choosing the aspects of indigenous knowledge to privilege and romanticise, while ignoring wider knowledge systems, and the status of indigenous people as political agents with their own separate interests.[30]

In New Zealand environmental policy, the argument for involvement from special knowledge is not used as often as it is in international conservation policy, or in countries such as Australia, where the value of indigenous knowledge is noted in the key environmental protection legislation.[31] Management policies in New Zealand tend to reference the Māori environmental ethic of *kaitiakitanga,* but the policies are vague about how this ethic will be used or protected. The definition of kaitiakitanga is contested, especially regarding its use in government policy documents. Loosely, it refers to a duty of care by tāngata whenua for their surrounding environment, based on ideas of reciprocal and kinship relationships between people and the other things of the world. The Waitangi Tribunal, in its report on the Indigenous Flora and Fauna and Cultural and Intellectual Property inquiry (the Flora and Fauna inquiry), defined kaitiakitanga as follows:

> Kaitiakitanga is the obligation, arising from the kin relationship, to nurture or care for a person or thing. It has a spiritual aspect, encompassing not only an obligation to care for and nurture not only physical well-being but also mauri. … In the human realm, those who have *mana* (or, to use treaty terminology, *rangatiratanga*) must exercise it in accordance with the values of kaitiakitanga – to act unselfishly, with right mind and heart, and with proper procedure. Mana and kaitiakitanga go together as right and responsibility, and that kaitiakitanga responsibility can be understood not only as a cultural principle but as a system of law. Finally, where kaitiaki obligations exist, they do so in relation to *taonga* – that is, to anything that is treasured. Taonga include tangible things such as land, waters, plants, wildlife, and cultural works; and intangible things such as language, identity, and culture, including mātauranga Māori itself.[32]

Kaitiakitanga is complex, encompassing rights and responsibilities towards heritage, as well as expertise, and is not usually appealed to in the same way as appeals for the value of traditional ecological knowledge elsewhere. For example, in DOC's key conservation policy document, kaitiakitanga is framed more as a duty than as a form of expertise:

> Effective partnerships with tangata whenua can achieve enhanced conservation of natural resources and historical and cultural heritage.

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[30] J.P. Brosius, "What Counts as Local Knowledge in Global Environmental Assessments and Conventions?," in *Bridging scales and knowledge systems: concepts and applications in ecosystem assessment* (Biblioteca Alexandrina, Alexandria, Egypt 2004), 11.
[31] The Environmental Protection and Biodiversity Conservation Act 1999 Section 3(g).
[32] Waitangi Tribunal, *Ko Aotearoa Tēnei*, Te Taumata Tuarua, vol. 1, Wai 262, (Wellington: Waitangi Tribunal, 2011), 17.

> Tangata whenua responsibilities to this heritage are embodied in the ethic of kaitiakitanga. Kaitiakitanga is a spiritual and environmental ethos that governs tangata whenua responsibilities for the care and protection of mauri, the dynamic life principle that underpins all heritage. Kaitiakitanga includes components of protection, guardianship, stewardship and customary use. It is exercised by tangata whenua in relation to ancestral lands, water, sites, resources and other taonga. The focus of kaitiakitanga is manaaki (care) and rahui (protection).[33]

'Mātauranga Māori' is a more direct translation of 'traditional knowledge'. DOC administers a fund called the Mātauranga Kura Taiao Fund, which is a contestable pool of money set up to help Māori to retain and develop knowledge for use in biodiversity management.[34] There is only one example of a Mātauranga Kura Taiao project available on DOC's website. Māori expertise is partly recognised, but it is not a prevalent feature in policy justifications for relationships with tāngata whenua.

The researchers in the 1998 Te Puni Kōkiri review noted that their "key stakeholder" interviewees complained that many DOC staff do not accept that Māori have a role to play in conservation.[35] The questions of whether DOC trusts Māori expertise, and whether Māori practices are sustainable were raised by claimants in the National Park inquiry:

> DOC is focused on preservation (the glass house or fishbowl perception of conservation) but Ngāti Rangi have a more hands on view. We see ourselves as an active part of the natural environment and seek to use the resources that are part of our culture in a sustainable manner. We believe we can both preserve and use our resources. This has created some conflict with DOC policy and every time I mention the word "cultural take" to DOC, I'm sure they start counting the Kereru [native wood pigeons].[36]

Claimants in the National Park inquiry argued strongly that they have environmental management expertise and this knowledge should be respected by the government. The argument, as previously mentioned, however, was deeply entwined with the argument that they have special rights to the land, and a special connection:

> Our people still have strong relationships with our rivers and lakes, especially the Rangitikei, Whangaehu, and Lake Rotoaira. Our old people still say we are "river people".... I know our hapu of Ngati

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[33] *Conservation General Policy*, 15.

[34] See the DOC website at: http://www.doc.govt.nz/getting-involved/volunteer-join-or-start-a-project/start-or-fund-a-project/funding/for-landowners/nga-whenua-rahui/matauranga-kura-taiao-fund/. The fund is linked to New Zealand's responsibilities under the CBD.

[35] Te Puni Kōkiri, *Key Stakeholder Interviews*, 14.

[36] Brief of Evidence of Keith Paetaha Wood, #A64, paragraph 66, 14. Kereru are a native wood-pigeon, and a traditional food source of many iwi and hapū. They have endangered status under New Zealand law.

> Waewae would like to see our waterways salvaged from decline. Our people want to be included in decision-making. We think our local knowledge of these waterways is invaluable to the National Park and all local councils, but we seem to be excluded from this process.[37]

The Ngāti Rangi closing submissions argue that their expertise is not the most important reason they should be included:

> It is not necessary for Māori to prove that they are the better managers or that their rules and practices in times past must necessarily continue to apply unchanged into the future.[38]

They pin their arguments squarely on the Crown's responsibilities under the Treaty to protect Ngāti Rangi's exercise of local authority.[39] The claimants often argued that they should be involved because they have special knowledge, but this argument was usually supplementary to the argument that they have a *right* to be involved.

The argument that locals should be involved in management due to their special expertise, is sometimes extended to argue that management should be fully devolved to locals as they would manage the resource better than the government does. Political scientist and co-management writer Sara Singleton described the arguments for devolution in natural resource management as follows:

> … the rationale for political devolution arises largely from the idea that local people and local governments are expected to have a clearer understanding of local socio-economic and cultural circumstances and are thus better equipped to devise fine-tuned regulatory solutions to environmental problems.[40]

Devolution is sometimes criticised as representing an abandonment of responsibility on the part of governments, and for failing to represent the interests of the wider public in the resource in question.[41]

Arguments for devolution do not appear in New Zealand policy with regard to the conservation estate, unsurprisingly, as such arguments challenge government authority and expertise. An argument for devolution on the basis of superior management skills has sometimes been raised by claimants in Tribunal inquiries, including the National Park inquiry. These arguments are usually historical in nature: that is, those proposing these arguments point to Crown failure to care for New Zealand's natural environment

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[37] Brief of Evidence of Puruhi Smith, Wai 1130, #G31, September 28, 2006, paragraphs 20-21, 5.
[38] Closing Submissions on Behalf of Ngāti Rangi, #3.3.33, paragraph 2.8, 9.
[39] Ibid., paragraphs 2.4-2.7, 8-9.
[40] Sara Singleton, "Collaborative Environmental Planning in the American West: The Good, the Bad and the Ugly," *Environmental Politics* 11, no. 3 (2002): 57.
[41] Ibid., 70.

in the past, and argue that the superior record of Māori as land managers gives them a greater moral claim to manage parks.

> The settlers encouraged by Crown policy desecrated the land, got rid of the natural habitat, and then now DoC think they are the only ones that can fix it up…
>
> Iwi need to control and manage the National Park, it's as simple as that. They say we don't have qualifications to do it, but it is a cultural lifestyle to leave things as natural as possible and this is something that is being recognized internationally as the way to relate to National Parks. We may have cut trees down but there was a cultural process to it which took time. Māori need to play a bigger role in the actual day to day running of national parks. Enough of this tokenism of the kind which puts one representative on Park Boards. We need about a 60% share in management, or at least no less than 51% stake in the kinds of decisions being made.[42]

This failure to care for the environment is often seen to be continuing:

> Because the Crown is still taking a passive "softly-softly" approach to the Didymo [also known as "rock snot": an unpleasant-looking algae that grows on river and lake rocks] debacle and are constantly ignoring any responsibility or obligation to actively safe guard our rohe [tribal area] from the invasive algae, I strongly believe that Ngati Hikairo must be the consent authority for our waterways within our rohe.[43]

Claimants also used an argument for devolution for better resource protection by asserting a Māori view of the natural world, and claiming that government agencies are not capable of dealing with the range of issues in that framework. This was often phrased in terms of the Māori kinship connection with the resources in question, and is a much more complex argument than the ones based on skills gained from locality and length of connection to the land. This argument will be discussed in the section on rights.

3. Protection and Participation

Under the dual objectives of resource protection and community involvement, conservation may not necessarily be enhanced through community participation (though this is usually assumed or argued to supplement the argument) but, nevertheless, community participation is a right that cannot be ignored. Conservation, as a public good, should be planned and managed in consultation with the public, especially those with particular interest in the resource (the "stakeholders") at different levels. It is not

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[42] Brief of Evidence of Rangi Joseph Bristol, Wai 1130,.#D40, May 5, 2006, paragraph 30, .10, paragraph 33, 11.

[43] Brief of Evidence of Tyronne Andrew Smith on behalf of Ngati Hikairo ki Tongariro, Wai 1130, #G24, September 28, 2005, paragraph 86, 24-5.

that resource protection policies are abandoned, but win-win situations are actively sought, and compromises made. The relationship, under these objectives, is one where the government has the final say, but actively tries to work community interests into the final decision. Different community groups are all equally important voices in the discussion process, and the state agency weighs up the opinions and makes what they judge to be the best decision, within the bounds of their guiding legislation and policy. In some ways this argument is just a difference in emphasis from participation as a necessity for resource protection, but it is an important difference for the nature of the relationship.

This perspective, what Brechin et al might call "the practical middle ground" between the "pro-nature" and "pro-people" camps, is criticised from both sides of the debate.[44] The "pro-nature camp" sees community negotiation as a waste of time and energy when those resources should be devoted towards environmental management. Local groups, and particularly indigenous groups, however, see it as not going far enough towards power-sharing. Brosius noted that a key concern of the indigenous delegates to the 2003 World Parks Congress was that their interests should not be diluted down to becoming simply one voice among many. [45]

New Zealand conservation policy, as previously noted, frames its responsibilities to Māori chiefly in the form of Treaty obligations, which would seem to imply a different kind of right to involvement from other groups and individuals with interests in park management. The general policy document for national parks has consecutive sections addressing "Treaty of Waitangi responsibilities" and "Public Participation in National Parks." Although these different headings imply that Māori involvement and community involvement are different kinds of issue, the sections are almost identical except that where DOC is instructed it *may* behave in a certain way towards general public interest groups, it is instructed it *should* behave in that way towards Māori. Likewise, when DOC *should* (for example) consult "people and organisations interested in national parks" on matters of significance to them, it stipulates that it *will* consult with tāngata whenua on matters of significance to them.[46] The document explains that *may* indicates "policies intended to allow flexibility in decision-making," *should*

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[44] Wilshusen, P.R., S.R. Brechin, C.L. Fortwangler, and PC West, "The Road Less Traveled: Towards Nature Protection with Social Justice," in P.R. Wilshusen, S.R. Brechin, C.L. Fortwangler and PC West (eds), *Contested Nature: Promoting International Biodiversity with Social Justice in the Twenty-First Century*, (New York: New York Press, 2003), 260.
[45] Brosius, "Indigenous Peoples and Protected Areas at the World Parks Congress," 611.
[46] DOC, *General Policy for National Parks,* 19, 16.

indicates "policies that carry with them a strong expectation of outcome, without diminishing the constitutional role of the Minister and other decision-makers" and *will* is used for "policies where legislation provides no discretion for decision-making or a deliberate decision has been made by the Authority to direct decision-makers."[47] DOC therefore has a stronger obligation towards Māori to fulfil the same set of policies that apply to the general public. Māori have what might be described as a 'first among equals' position as a stakeholder group.

Many of the writers contributing to the New Zealand literature emphasise the distinction between Māori and other stakeholders. "General interest group" status is the lowest rung of a nine-rung participation ladder described by Jacinta Ruru (who adapted it from Tania Ruru who in turn adapted it from Sherry Arnstein). Jacinta Ruru describes the "general interest group" category as follows:

> At this level Māori would be considered one of a number of interest groups. Their interests would be given no express mention or priority in legislation. Where considered relevant, Māori interests would be weighed against the interests of other groups in the administration and management process.[48]

This status is six levels below that which Jacinta Ruru sees as involvement which would adequately reflect the Treaty principle of partnership.[49] Ruru's scale is discussed more thoroughly in the following chapter.[50]

In 2007, a staff member of the Tongariro/Taupō Conservancy office wrote a sabbatical report on co-management in New Zealand, Australia and Canada, and among her observations on Tongariro she noted that "[i]wi don't appreciate being referred to as "stakeholders." They are tangata whenua – people of the land."[51] In the Tūwharetoa closing submissions to the National Park inquiry the iwi argued that they, and other

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[47] Ibid., 14.

[48] Jacinta Ruru, "Legislative Provision for Tino Rangatiratanga: A National Park Case Study," *The Yearbook of New Zealand Jurisprudence (Special Issue: Te Purenga)* 8, no. 2 (2005): 325. The ladder is adapted from Tania Ruru, *The Resource Management Act 1991 and Nga Iwi Māori.* LLM Thesis, University of Otago, 1997, 28-31, in turn adapted from Sherry Arnstein, "A Ladder of Citizen Participation," *Journal of the American Institute of Planners* 35, no. 4 (1969). See chapter three page 66 for more detail on Arnstein's ladder.

[49] Jacinta Ruru, "Legislative Provision for Tino Rangatiratanga," 333.

[50] See chapter three, page 68.

[51] Nic Etheridge, "Co-Management between Government Conservation Agencies and Indigenous People in New Zealand, Australia & Canada," (Department of Conservation, 2007), 30.

Māori, had *subordinate* status on the Conservation Board compared to groups such as the Ruapehu ski club.[52]

The difference between the rights of Māori and those of the general public in New Zealand is a controversial topic in New Zealand. DOC tries to balance the expectations of Māori with the expectations of Pākehā who are often sensitive about the idea of Māori interests having higher priority in government decision making. Reference to the special relationship established by the Treaty, and the reference to the Treaty in the *Conservation Act* indicate that Māori rights have a completely separate source than do the rights of other groups interested in the park. However, as the general policy shows, the translation of these rights into policy is only subtly different from the rights of "public participation." Māori, on the other hand, have clearly rejected a status as being one stakeholder group among many.

4. Rights

Arguments for indigenous rights are occasionally mentioned in the international conservation agreements, but conservation protection remains paramount. The World Wildlife Fund (WWF) and IUCN, for example, support rights as long as they do not threaten protection objectives:

> …the rights of indigenous and other traditional peoples inhabiting protected areas must be respected by promoting and allowing full participation in co-management of resources, and in a way that would not affect or undermine the objectives for the protected area as set out in its management plan.[53]

The arguments referencing indigenous rights are more often used to justify the return of land, or the handover of control to indigenous management, than they are used to argue for shared management. When they *are* used to justify co-management of one form or another, this is usually explained as a political trade-off, or presented as an admission that others also have some rights in the area. Co-management is set up as a compromise between conservation goals and the rights and interests of the indigenous groups. Stan Stevens provides a succinct summary of the positive and negative possibilities of these arrangements:

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[52] Closing Submissions for Ngati Tuwharetoa, Wai 1130, #3.3.43, June 7, 2007, paragraph 8.129, 203.
[53] Javier Beltrán, "Indigenous and Traditional Peoples and Protected Areas: Principles, Guidelines and Case Studies," in *Best Practice Protected Area Guidelines*, ed. Adrian Phillips (World Commission on Protected Areas, IUCN, 2000), ix.

> At best, co-management marries strong community-based indigenous resource management and conservation with government resources in alliances that safeguard and support indigenous rights, community-based conservation, and self-determination. More often, co-management arrangements may be unstable marriages of convenience – a level of government recognition of indigenous peoples that precludes simple expropriations of their lands to manage as protected areas but stops short of granting full recognition of their sovereignty, self-determination, land rights, and authority over natural resource management.[54]

Many writers note that when historical injustices remain unremedied, for the victims of those wrongs the desire for justice overshadows the questions of how, and how well, the land is managed. Marcus Colchester compiled a long list of ways in which indigenous peoples have been badly affected by the establishment of protected areas, a few of which are:

- Denial of rights to land.
- Denial of use of and access to natural resources.
- Denial of political rights and the validity of customary institutions.
- Disruption of customary systems of environment management.
- Symbolic ties to environment broken.
- Cultural identity weakened.
- Intensified pressure on natural resources outside the protected areas.[55]

The grievances resulting from such injustices are paramount to the people affected. Brad Coombes wrote of his research in Te Urewera that the claims of Tūhoe were "…substantially grounded in land loss rather than the appropriateness of Pākehā conservation approaches."[56] The same sentiment was expressed in the closing submissions of the Tūwharetoa claimants in the National Park inquiry. The submission also claimed that the Crown had tried to justify the land taking by an appeal to the ideals of conservation, protecting lands for the public into the future, when in truth the real motivations were pecuniary.[57]

This a good example of the complex mixture of moral arguments used by indigenous peoples and their advocates in these debates. In his book *Justice and the Maori* (1997), historian and political philosopher Andrew Sharp briefly analysed the Waitangi Tribunal's 1985 inquiry into the Manukau claim. This claim was brought forward by the

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[54] Stan Stevens, "Part 2: Co-Management," in *Conservation through Cultural Survival: Indigenous Peoples and Protected Areas*, ed. Stan Stevens (Washington DC: Island Press, 1997), 131.
[55] Marcus Colchester, "Conservation Policy and Indigenous Peoples," *Environmental Science & Policy* 7(2004): 147.
[56] Coombes, "Contested Conservation Legacies," 4.
[57] Closing Submissions of Ngati Tuwharetoa, #3.3.43, paragraph 7.23, 108.

Tainui iwi over the Manukau harbour in South Auckland. Sharp identified five different kinds of argument raised by the claimants as to their rights over the harbour, although he also noted that this was probably not a particularly exhaustive or adequate list. The Manukau claimants argued that they were legally entitled to what they claimed, because laws had been broken depriving Tainui claimants of their resources. The Treaty was brought into this argument as a legally binding document. Claimants also argued that they were morally entitled to what they claimed, either on the basis of their prior claims as indigenous people, or again with reference to the promises of the morally-binding Treaty of Waitangi. Thirdly, it was argued that Tainui deserved to have control of the harbour, because they had proved themselves to be better guardians (kaitiaki) of the environment. Fourthly they argued they needed control over the harbour, in order to live meaningful lives (and also that the harbour needed them, and that Pākehā needed the healthy resource that would result from their careful guardianship). Lastly, Sharp identified an argument from duty – that Tainui had a cultural duty to fulfil their roles as guardians.[58]

Each of these arguments was drawn upon in the National Park inquiry, as was a sixth argument that invoked ideas of international best practice, a kind of comparative justice:

> Several international models of national park management which grant some form of indigenous involvement exist and it is submitted that while there are certainly complexities involved in any model of management where there are diametrically opposed values at stake, New Zealand remains well behind other nations that are striving to provide for a joint management model that takes into account the rights and needs of indigenous peoples.[59]

The Australian national parks of Uluru-Kata Tjuta and Kakadu were drawn upon as particular examples in this case.[60] In the Uenuku (a Whanganui group) closing submission Gwaii Haanas, in Canada, was used as an example, particularly its Watchman programme, which is run by the local indigenous people and funded by Parks Canada.[61]

The last three of the arguments identified by Sharp (that Māori are better managers, that they need to be involved for their own sake and that of the resource, and that they have a duty to be involved) tended to be rolled together in arguments under the one umbrella

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[58] Andrew Sharp, *Justice and the Maori: The Philosophy and Practice of Maori Claims in New Zealand since the 1970s*, 2 ed. (Auckland: Oxford University Press, 1997), 31.
[59] Closing Submissions of Ngati Tuwharetoa, #3.3.43, paragraph 8.120, 202.
[60] Ibid., paragraphs 8.121-8.130, 202-3.
[61] Closing Submissions of Uenuku, Wai 1130, #3.3.37, May 22, 2007, paragraphs 21.99-110, 138-40.

of kaitiakitanga. In the submissions to the National Park inquiry kaitiakitanga is usually directly referred to as a duty, but the exercise of this duty is implied to be a right that the government should protect. These submissions argue that it is necessary for the wellbeing of tāngata whenua to be able to exercise this right, and that it is necessary for the wellbeing of the environment for tāngata whenua to look after it in this culturally specific way. The mauri of a place needs to be protected by the *kaitiaki* (those who exercise kaitiakitanga).

Many of the individual submissions argue that the natural environment would be improved if they had more opportunity to exercise kaitiakitanga.

> There needs to be mechanisms put in place to help Ngati Hikairo to build the capacity of the hapu in order to return the mauri, for if the mauri is strong, the people, flora and fauna, and the land will thrive.[62]

Some submissions argue that DOC would also benefit from the incorporation of Māori cultural knowledge into their management systems, and say that DOC fails to take this into account:

> If DoC improved or created relationships with the hapu and supported them undertaking their kaitiaki roles then that there would be many advantages not only for the Department and the hapu but overall for the whenua [land]within the National Park. However, it seems that the hapu are interpreted out of the values of the National Park (by DoC's focus on conservation).[63]

Others focus on the exercise of kaitiakitanga as a *right.* Often it is referred to as a right and a responsibility simultaneously:

> Ngati Hikairo have a direct responsibility to preserve our cultural identity and to protect for the future, our heritage, which may be eroded by changes over time. As Ngati Hikairo are Kaitiaki who hold Mana-whenua [authority over land] over a majority of the Tongariro National Park, we see it as imperative that we are at the decision making table. Our status as Ahi-Kaa [people of continued residence – literally "burning fires"], shows our resolve to continue the founding that was first set by Ngatoroirangi that our fires of occupation are a true continuation of our right.[64]

The concept is invoked as part of a request for a role of guardianship or custodianship over the environment, which carries with it a certain status, certain responsibilities and

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[62] Brief of Evidence of Tyronne Smith, #G24, paragraph 89, 25.
[63] Brief of Evidence of Graeme Everton, #G36, paragraph 39, 9.
[64] Brief of Evidence of Tyronne Smith, #G24, paragraph 85, 24. Ahi-kaa means the burning fires, which symbolise continued connection to the land. The term is also sometimes used, as it is here, to refer to the people with ahi-kaa status. Ngātoroirangi was the Tūwharetoa ancestor who first came to the Tongariro area and climbed the mountain, claiming it for his descendants.

certain rights. In the arguments for this role to be restored and supported, claimants argue that their social wellbeing and the wellbeing of the environment will be improved. The lack of opportunity and support for Māori to fulfil this role is considered an injustice, and the submissions present the Crown's own attempts at environmental custodianship as a failure. Kaitiakitanga is also sometimes argued as being a part of rangatiratanga; control of the natural environment of their traditional area is a part of Māori self-determination.[65]

In summary, DOC and Māori have very different underlying beliefs about the reasons that they should work together in conservation management. Although DOC appeals to Treaty rights and the usefulness of the management ethic of kaitiakitanga, in its statements for action it is clear that Māori are seen as another community group who have a slightly stronger right to participate in management than other groups, but do not have the status of experts or special rights holders. In contrast, Māori lean heavily on the argument that they have special rights to the resource, related to their knowledge, their prior occupation of the area, their kinship connection to the land and resources, their status as kaitiaki, and what they see as the promises to protect all these things contained in the Treaty of Waitangi. Given these differences it is important to question whether or not the groups engaged in a co-operative management situation need to have the same goals for their relationship. The next section addresses this question.

How important is a shared vision for the relationship?

Roger Fisher and Scott Brown, of the Harvard Negotiation Project, point out that the nature of the relationship itself is sometimes a point of difference between negotiating parties, and argue that this does not preclude the possibility of successful cooperation:

> Suppose that I want the office to behave like one big happy family, while my boss wants our relationship to be strictly business.... Or suppose one country is looking forward to a live-and-let-live relationship based primarily on trade and investment, whereas its neighbour would like to use its resources to influence the politics of an entire region. The test of a good relationship is whether it is able to deal successfully with such differences, including those about the kind of relationship the parties should have. It is this problem-solving aspect of a relationship that we call a "working" relationship.[66]

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[65] Paul McHugh, *The Māori Magna Carta: New Zealand Law and the Treaty of Waitangi* (Oxford: Oxford University Press, 1991), 7.
[66] Roger Fisher and Scott Brown, *Getting Together: Building Relationships as We Negotiate* (New York: Penguin Books, 1989), 8.

Fisher and Brown argue that in any venture involving multiple parties it is best to see substantive issues, or outcomes, as separate from relationship issues, or process.[67]

Fisher and Brown also argue that defining a good relationship as one in which parties agree easily is as mistaken as defining a good road as one that is easy to build. Rather aptly in terms of the topic of this thesis, they go on to add:

> …a good road through mountains may be more valuable than one across a prairie. Similarly, a good relationship among parties with sharp differences may be more valuable than one among parties who find it easy to agree.[68]

Although differing ideas about the nature of a relationship can be successfully negotiated, it does form an extra layer of difficulty on a working relationship. At Tongariro the differences in goals with respect to the relationship are often an underlying or complicating factor in conflicts about how the park is managed.

Fisher and Brown describe a successful working relationship as one which is "able to deal well with differences," and which "produces a solution that satisfies the competing interests as well as possible, with little waste, in a way that appears legitimate in the eyes of each of the parties."[69] They do not go into detail about what they mean by "waste," but in the more famous book of the same series, *Getting to Yes: Negotiating Agreement Without Giving In,* by Fisher, William Ury and Bruce Patton, they explain that many negotiations fail to reach agreement, or the best agreement that they could have reached, because the negotiators do not see all the opportunities available to them.[70] The *Getting to Yes* writers advocate an attitude of inventiveness and generosity – both sides looking for an answer that is attractive to both.[71] Factors which make it difficult for parties to experiment with solutions could therefore be seen as a weakness.

Another potential area of wastefulness in a negotiation is time. Negotiations do take time, especially if there are complex issues to be resolved. There are necessary and unnecessary delays, however. The *Getting to Yes* authors argue that bargaining strategies based on the selection and defence of a predetermined position makes

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[67] Ibid., 16-8.
[68] Ibid., 5.
[69] Ibid., xiii, 8-9.
[70] Roger Fisher, William Ury, and Bruce Patton, *Getting to Yes: Negotiating Agreement without Giving In*, 2nd ed. (New York: Penguin Books, 1991), 56-7.
[71] Ibid., 56-80.

negotiation slow and fractious, for example.[72] Unnecessary or overly lengthy bureaucratic processes are another potential source of avoidable delay.

DOC and Māori have differing ideas about the purpose of their relationships and neither party is consistently clear about what kind of success they are trying to achieve. A more useful notion of success is one that is limited, as much as possible, to the workings of the collaboration itself. This focuses attention on the process, rather than the outcomes of co-management. The questions then become: what helps differing groups to work together productively, and what hinders them? The next chapter looks at how "process" might be defined and divided into categories for analysis, then identifies factors in each area which obstruct and assist the parties in their attempts to work together.

[72] Ibid., 6.

Chapter Three: Problems and Strengths

The co-management literature is full of advice about how co-management can be made more successful, and what causes it to fail. This literature is tied closely to the literature on evaluating the success of co-management. Many writers base their evaluation frameworks around a set of social and environmental outcomes, which is problematic as it assumes that each initiative has the same, or very similar, goals and objectives. This chapter presents the existing frameworks for understanding and evaluating co-management, focusing on the process of co-management and how to define this process in a way that allows for the identification and analysis of problems and strengths.

"Process" is usually a category in co-management frameworks, but it is seldom precisely defined, and there are a variety of approaches in the literature when it comes to measuring or evaluating it. This is perhaps understandable in an area which attracts the attention of scholars from many disciplinary backgrounds, from business studies to political science and anthropology. This brings a richness and diversity to the writing on co-management, but also makes the literature somewhat incoherent. There are two broad ideas in co-management writing about what "process" is: some writers use the concept to encompass all the actions and interactions undertaken by participants towards the goal of managing the resource, including the structural arrangements within which they work.[1] Others contrast process and structure, separating the actions of participants, and linkages between them, from the formal structure of co-management.

In the former group the ideas for what is important for the success of co-management are broad and encompassing, but the lack of further definition about what constitutes 'process' makes it a difficult concept to use for analysis. Alexander Conley and Margaret Moote, for example, provide this list of "process criteria" for the purpose of evaluating co-management, which they derived from a survey of co-management literature in 2003:

- Broadly shared vision
- Clear, feasible goals

[1] Alexander Conley and Margaret A. Moote, "Evaluating Collaborative Natural Resource Management," *Society & Natural Resources* 16, no. 5 (2003). Other writers also use the categories of "process" and "outcomes," for example: J. Innes and D. Booher, "Consensus Building and Complex Adaptive Systems: A Framework for Evaluating Collaborative Planning," *American Planning Association. Journal of the American Planning Association* 65, no. 4 (1999); R.D. Margerum, "Integrated Environmental Management: The Foundations for Successful Practice," *Environmental Management* 24, no. 2 (1999).

- Diverse, inclusive participation
- Participation by local government
- Linkages to individuals and groups beyond primary participants
- Open, accessible, and transparent process
- Clear, written plan
- Consensus-based decision making
- Decisions regarded as just
- Consistent with existing laws and policies.[2]

These criteria are diverse. Principles such as being "consistent with existing laws and policies" and having a "clear written plan" are to do with design and planning; criteria such as having a "broadly shared vision" and decisions being regarded as just, are about the attitudes of the people involved, and the relationships between them. This broadness makes their notion of "process" difficult to use as an analytical tool.

Other writers contrast "process" with "structure," where process is the set of interactions taken towards managing the resource, and structure is merely the formal organization guiding these interactions. Lars Carlsson and Fikret Berkes emphasise the nature of co-management as a continuously evolving governance system, a network composed of a variety of actors.[3] They contrast this with the 'typical' definition of co-management as a formal decision-making structure. They argue that this formal structure is just one of the elements of these interactions. Carlsson and Berkes offer ways to map those interactions, such as identifying the boundaries of the system, the management tasks the people who fulfil those tasks and the linkages between those people.[4]

Though this idea of co-management as a set of tasks and interactions is richer and more encompassing than the previous conception of co-management as a structural arrangement, it still misses out on some important dimensions of these relationships. Carlsson and Berkes do not consider the different meanings the participants may have around what constitutes management of the resource, or the nature of their relationships with each other. The rest of this chapter describes a framework which does include these factors, and uses it to identify the key problems and strengths of relationships at Tongariro.

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[2] Conley and Moote, "Evaluating Collaborative Natural Resource Management," 376.
[3] Lars Carlsson and Fikret Berkes, "Co-management: Concepts and Methodological Implications," *Journal of Environmental Management* 75(2005): 70.
[4] Carlsson and Berkes, "Co-management," 66-70.

Process subdivided – the four frames

Lee Bolman and Terrence Deal, two influential writers in management literature, have noted the diversity of interpretations about what management is. Bolman and Deal identified four predominant "frames" by which people approach the analysis of organisations, which reflect disciplinary differences and also represent different aspects of what an organisation is. This "frame" based approach is useful here for two reasons. Firstly, it is a way of dividing the broad notion of the co-management "process" into categories for analysis. Secondly it is a helpful means of sorting and reviewing the interdisciplinary literature around co-management.

The first of Bolman and Deal's frames is a structural frame, which sees an organisation as akin to a machine, or a factory. In this approach formal roles and rules are emphasised. Bolman and Deal suggest this is an approach characteristic of sociology and economics. The second is a political frame, as described by political scientists, which conceptualises an organisation as a competitive arena or jungle, where people pursue their personal agendas and vie for scarce resources. The third is a cultural frame, in which an organisation is a theatre, temple or carnival, full of myths and rituals. Bolman and Deal argue that this is an anthropological approach. In this frame people are motivated by inspiration, rather than self-interest. The last is a human resource frame, where an organisation is like a family, the domain of psychologists. People are seen to be chiefly motivated by various personal needs and desires.[5]

This framework-of-frames is useful because it is simple, comprehensive, and creates categories for analysis without sacrificing the richness that results from an interdisciplinary literature. Bolman and Deal make it clear that all these perspectives are valid and represent realities of management: institutional rules; political manoeuvrings; meaning-making processes and individual personalities all operate simultaneously. The frames are not a set of hard divisions between separate aspects of management, but a set of four overlapping spheres of activity. Bolman and Deal suggest that it is important to keep all these aspects of management in mind when facing difficult situations.[6]

Although the four frames are designed for understanding organisations, rather than wider management networks including other organisations and community groups, the categories are equally applicable to the more complex management systems involved in

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[5] Lee Bolman and Terrence Deal, *Reframing Organizations: Artistry, Choice, and Leadership*, 4th ed. (San Francisco: Jossey-Bass, 2008), 15-22.
[6] Bolman and Deal, *Reframing Organizations,* 21-2.

co-management of natural resources. A similar set of categories were identified in *Making Collaboration Work* (2000), by Julia Wondolleck and Steven Yaffee, who surveyed collaborative initiatives across the United States. They described the obstacles that face these collaborative efforts as follows:

> Problems result from the institutional structure within which collaboration takes place, the ways that individuals and groups think about collaboration and each other, and the manner in which collaborative processes have been managed. These obstacles affect the willingness and capacity of people in all sectors to participate in collaborative activities. Some are easy to deal with, while others are intrinsically difficult. All combine to make collaboration challenging, but not impossible when individuals work hard at overcoming the obstacles.[7]

The structural, symbolic and human resource frames can be recognised here; the political frame is not obvious in this quote but in other parts of their book issues relating to power struggles and group agendas are clearly identified.[8] Another broad review of the literature on collaborative initiatives, by Chris Ansell and Alison Gash of the University of California at Berkeley, also identified similar categories.[9] Writers such as these in the co-management literature provide some useful sub-categories within the four frames identified by Bolman and Deal, and I use their work to adapt the frames to a co-management context.

Though Bolman and Deal essentially portray the four frames as having equal importance, the human resource frame, which I prefer to call the people frame, is a different kind of frame from the other three. Structures, politics and attitudes are all played out in the way people behave, and I therefore see the people frame as central (see figure 2).

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[7] Wondolleck and Yaffee, *Making Collaboration Work*, 51.
[8] Ibid., 65-6, 167, 203-6.
[9] Ansell and Gash, "Collaborative Governance in Theory and Practice," 1.

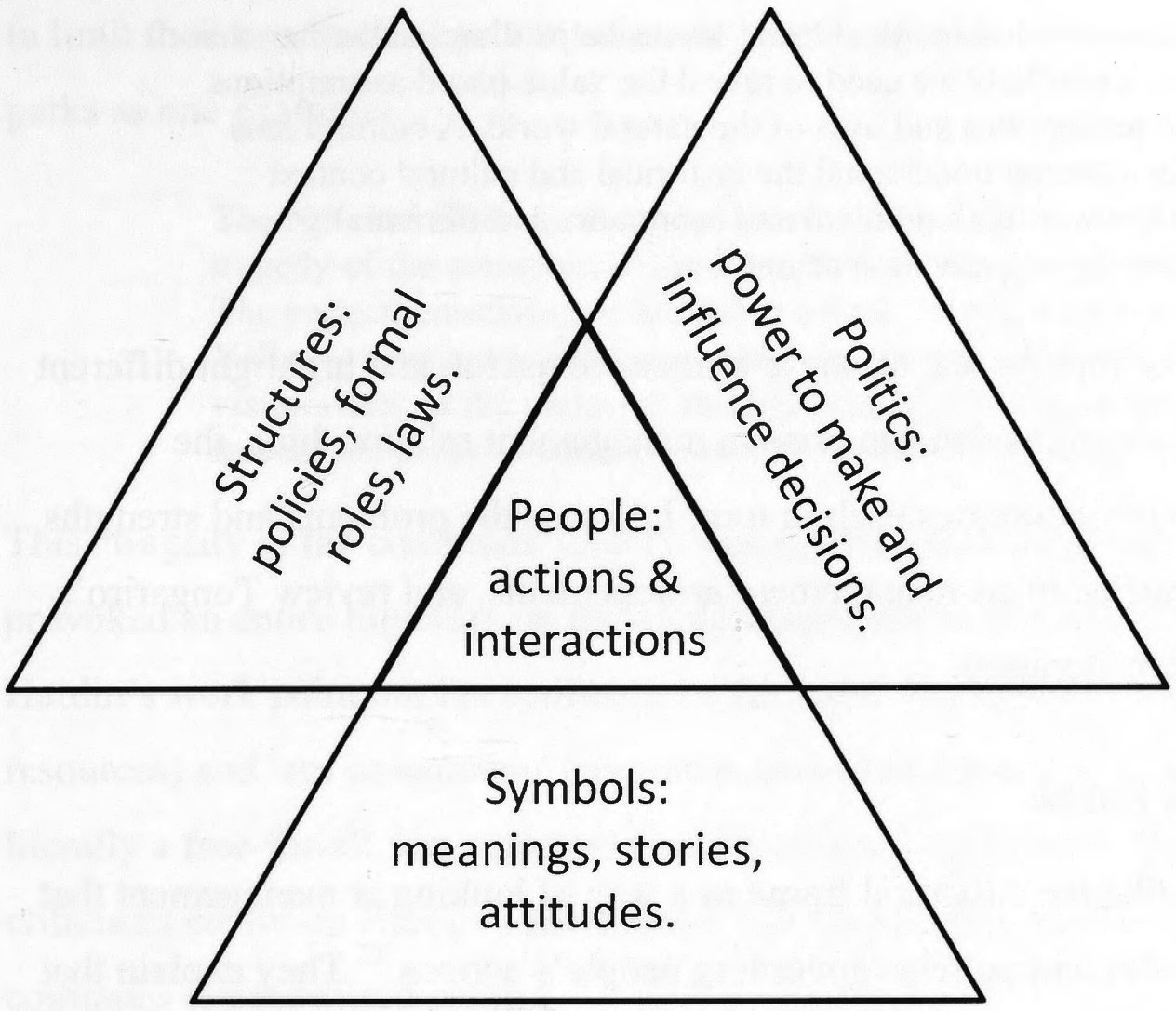

Figure 2: The four frames, with the people frame as central. Adapted from Bolman and Deal.[10]

It could be argued that there are important external factors that do not fit into the four frames, for example the economic climate, the geography of the area and the history of interaction between the key groups. These aspects of a collaborative initiative are important to understand, and I do address them in this thesis. However, they are also to a large degree beyond the influence of those immediately involved in co-management. The advantage of this framework is its focus on the collaborative initiative itself, and the features of it that might realistically be altered to create a better relationship.

Bolman and Deal's frames are also a helpful means of organising the interdisciplinary literature on co-management into categories for review. Many writers fall recognisably into certain frames. Of the New Zealand writers reviewed in chapter one, Mark Prystupa's account of the campaign for co-management at Te Waihora is a political tale of competing agendas. Ruru's analysis of the legal framework operating in parks is a structural approach. In other places she writes of the differing values and perspectives in relation to these places, providing a cultural interpretation of the situation.

These approaches can also be seen in the international literature on co-management. Environmental scientist Richard Petersen and others made it clear they were using "a cultural lens" to explore the impacts of conservation on human communities:

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[10] Bolman and Deal, *Reframing Organizations,* 15-22.

> Viewing conservation through cultural lenses helps illumine the fact that to resolve such conflicts we need to reveal the value-based assumptions that underlie perceptions and uses of the natural world. A cultural lens can also help us better understand the historical and cultural context within which power, both political and economic, is differentially distributed among conservation actors.[11]

Proceeding from the assumption that all these frames are useful, and highlight different kinds of problems and strengths that can arise in management relationships, the following literature review addresses each in turn. I discuss the problems and strengths other writers have identified in co-management arrangements, and review Tongariro's case in light of the wider literature.

1. The Structural Frame

Bolman and Deal describe the structural frame as a way of looking at management that emphasises the laws, rules and policies governing people's actions.[12] They explain that to those working within the structural frame the goal of management is to align these structures with the environment in which the organisation operates. Structures shape how we act, especially by setting the limitations of action. They provide guarantees and boundary lines. Bolman and Deal's description of structure corresponds to definitions of formal institutions. Institutions have popularly been defined as "established norms, rules, and practices that guide and constrain human behavior and action."[13] Formal institutions are codified rules such as laws and written contracts, whereas informal institutions are based on convention, such as practices, attitudes and beliefs.[14] This section looks at formal institutional factors. What are referred to as informal institutions are discussed in the section on the symbolic frame.

The importance of institutional design is well recognised in the literature on collaborative management; in fact, a focus of recent writing has been to emphasise that it is not the *only* factor in operation. The early literature on collaboration was strongly focused on institutional arrangements. This followed an article by Garrett Hardin in 1968, in which he argued that resources in collective use (common-pool resources), would inevitably be depleted or destroyed without some form of coercive intervention

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[11] R.B. Peterson et al., "Seeing (and Doing) Conservation through Cultural Lenses," *Environmental Management* 45, no. 1 (2010), unpaginated.
[12] Bolman and Deal, *Reframing Organizations,* 18.
[13] C. Prell et al., "Competing Structures, Competing Views: The Role of Formal and Informal Social Structures in Shaping Stakeholder Perceptions," *Ecology & Society* 15, no. 4 (2010): unpaginated.
[14] Ibid.

to limit their use, such as privatisation or state regulation.[15] Hardin referred to national parks as one example:

> The National Parks present another instance of the working out of the tragedy of the commons. At present, they are open to all, without limit. The parks themselves are limited in extent – there is only one Yosemite Valley – whereas population seems to grow without limit. The values that visitors seek in the parks are steadily eroded. Plainly, we must soon cease to treat the parks as commons or they will be of no value to anyone.[16]

This "tragedy of the commons" theory was influential in academia and policy, and provoked an entire literature on the management of the commons. Criticisms of Hardin's work point out his confusion of the legal concepts of 'res nullius' (unowned resources) and 'res communes' (resources owned in common). Unowned resources are literally a free-for-all, but common pool resources usually have rules of use.[17] Other criticisms centre on Hardin's assumption that the solution to the tragedy of the commons is centralised control.

Elinor Ostrom, in her book *Governing the Commons: the Evolution of Institutions for Collective Action,* published in 1990, challenged Hardin's argument that centralised regulation was the best way of avoiding the loss of the commons. Ostrom contended that resource users themselves can, and do, organise co-operatively to manage common-pool resources.[18] Ostrom outlined eight key features of institutional design, the implementation of which increase the likelihood of success, defined as the sustainability of resources and the sustainability of co-operative structures.[19] Her eight design principles are as follows:

1. Boundaries of both the resource and the user/manager group need to be clearly defined;
2. Rules of use and of maintenance need to suit local conditions;
3. All affected individuals should be involved in collective decision-making over those rules;
4. Users or their delegates should be in charge of monitoring compliance;
5. Sanctions should vary according to the severity of the rule-breaking;

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[15] Garrett Hardin, "The Tragedy of the Commons," *Science* 162 (1968).
[16] Ibid., 1244.
[17] S.V. Ciriacy-Wantrup and Richard C. Bishop, "'Common Property' as a Concept in Natural Resources Policy," *Natural Resources Journal* 15, (1975): 715, 716-721.
[18] Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1990), xiv, 20-1, 90.
[19] Ibid., see pxiv, pp20-21.

6. Conflict-resolution mechanisms should be cheap and readily-accessible;
7. Rights of local users to run these institutions need to be recognised at higher levels, and
8. Large common-pool resources need to be run through a system of nested institutions at multiple levels.[20]

These design principles are a comprehensive set of formal institutional success factors. Recent co-management literature has emphasised that formal structures are only one aspect of the ongoing negotiation process that more widely constitutes co-management, but the need for institutions that support this process is still recognised.[21] Ostrom and the followers of "new institutionalism" are prevalent in the co-management literature.

Another key figure in the literature on collaboration is Sherry Arnstein, who published a famous article on the "ladder of participation" in 1969. Arnstein's ladder climbs from sham-participation at the lowest rung, where, although there may be meetings, citizen views are completely disregarded, to full citizen control at the highest, eighth step (see figure 3).

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[20] Ibid., pp90-102.
[21] For example: J. Altman and M. Cochrane, "Sustainable Development in the Indigenous-Owned Savanna: Innovative Institutional Design for Cooperative Wildlife Management," *Wildlife Research* 32, no. 5 (2005).

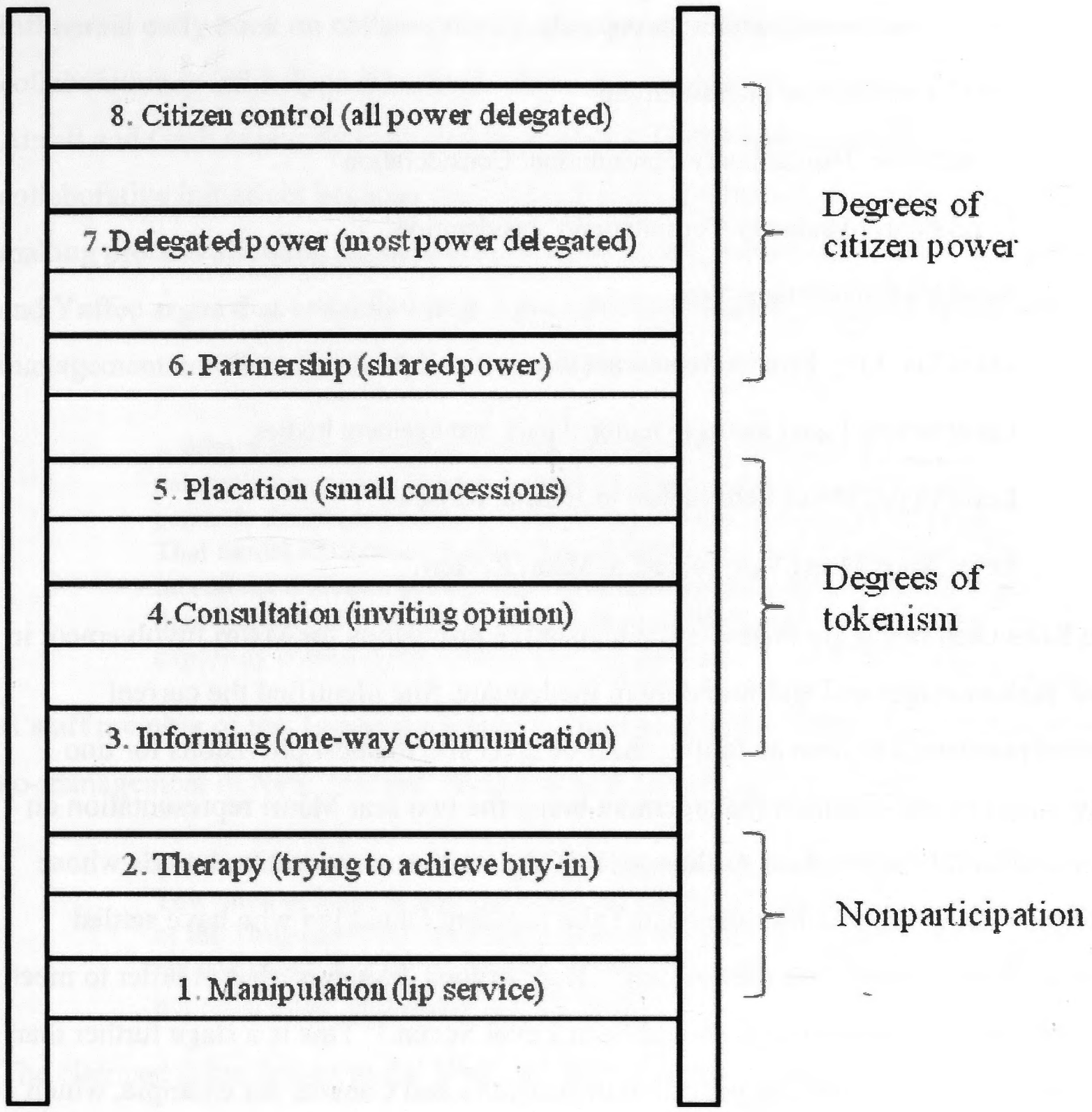

Figure 3: Arnstein's Ladder of Participation.[22]

Arnstein's categories were intended to represent the real levels of influence community members have in decisions, rather than particular structures for involvement. For example, in her exposition of the meanings of 'manipulation' she explained this category could range from invitation to public meetings to a seat on a decision-making board, but whichever arrangement it was would be an entirely empty gesture, designed to create a façade of involvement while in reality allowing members of the public no sway over decisions at all.[23] Many adaptations of the ladder characterise the rungs as structures, however. Jacinta Ruru, a New Zealand legal academic, used an adaptation of Arnstein's ladder originally designed by Tania Ruru in her master's thesis in law. Her adaptation translates Arnstein's rungs into a New Zealand context, showing potential organisational structures for Māori involvement in national park management:

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[22] The short descriptions in brackets are my own additions based on Arnstein's explications of each level of participation. Arnstein, "A Ladder of Citizen Participation," 217-23.
[23] Ibid., 218.

Level One: General interest Group only

Level Two: Special Interest Group

Level Three: Discretionary Consultation/ Consideration

Level Four: Mandatory Consultation/Consideration

Level Five: One Maori Vote

Level Six: Fifty Percent Representation

Level Seven: Equal Status to national park management bodies

Level Eight: Maori Veto subject to Judicial Review

Level Nine: Maori Veto subject to Maori Review.[24]

Jacinta Ruru used this scale to assess the legislative provisions for Māori involvement in national park management and found them inadequate. She identified the current legislative provisions system as falling short of level six, the best provisions for tino rangatiratanga in conservation management being the two seat Māori representation on the New Zealand Conservation Authority (NZCA), and on conservation boards whose jurisdictions fall entirely within the Ngai Tahu (a South Island iwi who have settled their major Treaty claim with the Crown).[25] Ruru argued, however, that in order to meet Treaty obligations representation should be at Level Seven.[26] This is a stage further than the structure of co-management prevalent in Australia and Canada, for example, which involves a singular board, half or more of the members of which are indigenous.

Consultation has been criticised by many in the co-management literature as being a token form of involvement, which does not provide any guarantee that the opinions of those consulted will be incorporated into decisions. Arnstein wrote this about consultation:

> Inviting citizens' opinions, like informing them, can be a legitimate step toward their full participation. But if consulting them is not combined with other modes of participation, this rung of the ladder is still a sham since it offers no assurance that citizen concerns and ideas will be taken into account.[27]

Many writers argue that when decision-making power rests firmly in the hands of one party, as it does at Tongariro, there is bound to be conflict. Barbara Gray, author of an

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[24] This is a summary of the descriptions provided in Jacinta Ruru, "Legislative Provision for Tino Rangatiratanga," 325-6.
[25] Ibid., 331.
[26] Ibid., 333.
[27] Arnstein, "A Ladder of Citizen Participation," 219.

influential early book on collaborative management, claimed that successful collaboration is unlikely in situations where one stakeholder can take unilateral action.[28] Ansell and Gash explicitly excluded consultative frameworks from their survey of collaborative initiatives because they did not see consultation as a collective decision-making process allowing for deliberation between the parties involved.[29] Wondolleck and Yaffee argue that consultation is a poor decision-making framework for resolving management conflicts for the following reasons:

> …administrative decision making has taken the form of a top-down paternalistic process in which agencies listen to public concerns and generate decisions based on their sense of science and public interest. That model of decision making leaves little room for collaboration. The incentives it creates push groups to accentuate their differences rather than searching for common ground. It provides few opportunities for exploring common interests or creative solutions.[30]

A staff member of the Tongariro/Taupō Conservancy office wrote a sabbatical report on co-management in New Zealand, Australia and Canada and observed:

> Iwi would like to have a stronger partnership with DoC. Ngati Tuwharetoa, Ngati Rangi and other iwi would consider joint management of the Tongariro National Park as part of the journey towards sole management. A place on the Conservation Board is not enough, as it does not reflect true partnership in their view.[31]

The claimant submissions to the Waitangi Tribunal advocated for new institutional structures. The closing submissions for Tūwharetoa argued that the iwi's "ultimate right" was to share the governance and management responsibilities for the park. They described the Te Heuheu seat on the Conservation Board as "a single honorary chair on a board with little input into the running of the Park," and said this was inadequate.[32] A member of Ngati Rangi involved in the Karioi Rāhui project said in his submission that:

> We want all consultative processes with DOC to be the same as what they are in the Karioi Rahui. We want to be part of the decision-making process at the ground floor. Local DOC management had difficulty meeting our desire to have full active management once outside the Karioi Rahui project perimeters, and National DOC staff would always be evasive whenever we pushed for greater participation. Often we were told that the Crown Law Office would not accept our proposals for greater participation. What we have with DOC at the moment is a

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[28] Barbara Gray, *Collaborating: Finding Common Ground for Multiparty Problems* (San Francisco: Jossey-Bass, 1989), 255.
[29] Ansell and Gash, "Collaborative Governance in Theory and Practice," 4.
[30] Wondolleck and Yaffee, *Making Collaboration Work*, 52.
[31] Etheridge, "Co-management," 31.
[32] Closing Submissions of Ngati Tuwharetoa, #3.3.43, paragraph 8.129, 203.

> relationship rather than a partnership, where DOC and the Crown still exercise absolute control.[33]

DOC does not have the ability to establish joint management boards over national parks, as the Conservator, Paul Green, explained in the inquiry:

> KF: …what the Trust Board was seeking [in their 2003 submission regarding the then draft National Park Management Plan] was the creation of a joint management board between DoC and tangata whenua so that the park could be jointly managed in "a manner consistent with the ethos of the gift of Te Heuheu Tukino IV." Where did that idea of a joint management board get to?
>
> PG: The joint management board was not adopted, the principle was not adopted I guess because of it being in conflict with the legislation…[34]

Green was not specific about which part of the legislation a joint management board would contravene. The Act does state that:

> The Department shall [subject to the legislation, general policy, conservation management strategy, and national park management plan] administer and manage all national parks in such a manner as to secure to the public the fullest proper use and enjoyment of the parks consistent with the preservation of their natural and historic features and the protection and wellbeing of their native plants and animals.[35]

The Act allows the Director-General to delegate powers, but only to DOC officers.[36] The joint management arrangements that currently exist over substantial areas of the conservation estate have been established by statute as part of settlement claims.

Legal and departmental rules as to how relationships with community groups should be structured can be obstacles to productive relationships. Many writers note the importance of flexibility and a willingness and ability to innovate in collaboration.[37] A flexible approach to management allows for different interests to be accommodated and special exceptions to be made. The topic of relationship flexibility was raised in the National Park inquiry. Some claimants criticised the new system of standardising relationship agreements across New Zealand through the Crown Māori Relationship Instrument process.

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[33] Brief of Evidence of Keith Wood, Wai 1130, #A64, February 10, 2006, paragraph 55, 11.
[34] Draft Transcript of National Park Hearing 8, Wai 1130, #4.1.12, (Ohakune RSA Working Men's Club, Ohakune, 27-30 November to 1 December 2006), 460.
[35] National Parks Act 1980, section 43.
[36] National Parks Act 1980, section 42(1) – (7).
[37] For example Vivianne Weitzner, "Strengthening Collaborative Management of Protected Areas: Learning from the Field," (*Learning from Cooperative Management,* Haines Junction, Yukon April 24-26, 2007); Innes and Booher, "Consensus Building and Complex Adaptive Systems," 419. Wondolleck and Yaffee, *Making Collaboration Work*, 53-6, 87-98.

In 2004, Cabinet, the key decision-making body in the New Zealand government, issued a directive that the various agreements that Crown agencies were entering into with "Māori collectives" needed greater standardisation. In 2006 Te Puni Kōkiri published a set of guidelines on 'Crown Māori Relationship Instruments' (CMRI), a collective label for Memoranda of Understanding and other formal protocols designed to guide relationships between government agencies and Māori. Since then such agreements have become subject to another layer of bureaucracy. When a government body and a Māori group wish to enter into a CMRI their draft agreement must go by the Chief Legal Officer of DOC and then be reviewed by the CMRI officials' group, made up of members of Te Puni Kōkiri and the Ministry of Justice. The stated purposes of this system are to increase the consistency of the agreements, to raise interdepartmental awareness of the models in operation, and to assist their design and development.[38] This process seems to have the, perhaps inadvertent, side effect of making it more difficult for locals to author their own agreements.

The signing of Memoranda of Understanding (MOUs) in the Tongariro-Taupe Conservancy tailed off in the years immediately preceding the claim, and in the course of the claim there were several different explanations provided about the reasons for this. The Tongariro-Taupō Conservator, when questioned by Mark McGhie, the lawyer for Uenuku (a Whanganui group), said that his recent reticence about entering into MOUs was due to the changes to the draft agreements that were likely to ensue from the CMRI process:

> MM: Are you in favour of signing MoUs with local tangata whenua?
>
> PG: MoUs are very useful for establishing the framework of your relationship… They do take a large amount of time to negotiate. My experience is that words are very important to all parties and so my reluctance that has been expressed somewhere in the evidence to proceed with an MoU was flagging to the tangata whenua that … I didn't have the authority to sign it as it was at that time without it going through a process which was highly likely to change the actual wording ... So that's what my advice was at that time. Was it a good use of people's time when what was going to come back was probably looking a little bit different to what they actually wanted.[39]

Doris Johnston, the DOC policy manager at the time of the inquiry, was also questioned about MOUs, and she suggested that the amount of time involved in the approval

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[38] Te Puni Kōkiri, *Crown-Māori Relationship Instruments: Guidelines and Advice for Government and State Sector Agencies*, (Wellington: Te Puni Kōkiri, 2006), 4.
[39] Draft Transcript of National Park Hearing 8, #4.1.12, 472.

process for written agreements might favour proceeding with informal arrangements.[40] Tom Bennion, chief counsel for the claimants, pointed out that the Conservator had substantial licence to make independent decisions on other issues in his conservancy, sometimes involving large amounts of money, and raised the question as to why, in comparison, there was such a cautious approach to a mere MOU with a local Māori group. Johnston responded that the requirement was in order to ensure fairness of these agreements across the country.[41]

Several claimants argued that the reluctance of DOC to enter into MOUs was more political than procedural, and more expedient than generous:

> We were entering into a relationship based upon a Memorandum of Understanding with the Whanganui Conservancy and wanted something similar to happen [in the Tongariro-Taupo Conservancy].
>
> Paul Green told us that it was impossible. Apparently, the political climate was not right. He informed us that no Memorandums of Understanding were to be entered into. This was like a kick in the teeth to us.[42]

Another claimant argued that the fear of precedent-setting was at the heart of the involvement of National Office in vetting these local agreements:

> There is a willingness to make things work on the ground and to come up with workable solutions between Ngāti Rangi and local DOC staff. However, as soon as those solutions get back to the Crown in Wellington, any proposal/solution gets quashed for fear of creating a precedent.[43]

Whether the CMRI process represents a well- or ill-intentioned approach to partnerships is a moot point, but in practice it seems to be making it difficult for those at the local level to manage their own relationships.

Resourcing of relationships was another key issue raised in the inquiry. The amount of funding and support given to co-management arrangements can, to an extent, be seen as indicative of the level of commitment of governments to their policies in this area. Resourcing is recognised throughout the co-management literature as a key factor in achieving success. Wondolleck and Yaffee noted that a lack of resources, in the form of time, money, or personnel, was the most frequently cited source of difficulty in collaboration in their survey of collaborative management arrangements in the United

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[40] Draft Transcript of National Park Hearing 8, #4.1.12, 409.
[41] Ibid.
[42] Brief of evidence of Rangi Bristol, #D40, paragraph 14, 5-6. The same situation was also described in Brief of Evidence of Raymond Kairimu Rapana, Wai 1130, #D44, May 5, 2006.
[43] Brief of Evidence of Keith Wood, #A64, paragraph 55, 11.

States.[44] Paul Green estimated that thirty per cent more funding than the level being allocated to the conservancy at the time of the claim would be required to properly honour Māori participation.[45]

Wondolleck and Yaffee also note that a lack of official resourcing makes it especially hard for poorly-financed groups to participate.[46] This is a problem in New Zealand, where many iwi and hapū are under-resourced, and face demand for their opinions from many different local and central government agencies. It can be very difficult to find the time and personnel to read and respond to the many requests for feedback they receive. DOC funding policy does not allow for those consulted by DOC to be compensated for their time.[47] In an interview the Conservator emphasised the necessity of increased funding in order for relationships to be successful:

> I have always maintained that any form of active co-management will take massive resources. And I don't say that in a negative way, because it could be really positive. But it could be anywhere between a 30% and a 50% increase. And those costs are as valid as pest control or track maintenance. But it's a reality. And my worry is, my real worry is that those things won't be recognised in the outcomes [of the Tribunal claim]. And we will disappoint Māori and the New Zealand public by not being able to do what they want us to. If we're not given extra funding to do it we'll have to take money from other budgets, and we'll be criticised by the rest of New Zealanders. Because it's one thing to provide funding for redress, which has traditionally been the focus. It's far more complicated working out the ongoing funding requirements. And the same concern is reflected on iwi – I would really like that mentioned – there is concern that both parties will have resources to carry on the relationships required and desired.[48]

The issue of funding is a perennial one for DOC, which has had its four-year budget cut by $58 million in 2009.[49] Jobs have been cut since then and DOC has instructions from its minister to search for sponsorship from businesses to support its work.[50] It is difficult to imagine the Government being forthcoming with extra funding for DOC's relationships with Māori in the near future.

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[44] Wondolleck and Yaffee, *Making Collaboration Work,* 56-7.
[45] Tongariro-Taupō Conservator, in interview with Tongariro-Taupō Conservator and DOC Manager 2.
[46] Wondolleck and Yaffee, *Making Collaboration Work,* 57.
[47] Interview with Tongariro-Taupō Conservator, July 22, 2008.
[48] Ibid.
[49] Michelle Duff, "DOC head reassures on role of big business," December 10, 2010. http://www.stuff.co.nz/national/politics/4442580/DOC-head-reassures-on-role-of-big-business, accessed December 10, 2010.
[50] "DOC cuts 100 office-based jobs" *New Zealand Herald*, June 24, 2011. http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10734218, accessed June 24, 2011.

In summary, there are serious problems with the current structural arrangements for relationships at Tongariro. Consultation as a framework does not meet Māori expectations for their relationship with DOC, and the making of new project-based partnerships is being obstructed by the CMRI process. According to some claimant submissions, local DOC staff are willing to enter into shared management agreements but are unable to act on their willingness, due to restrictions placed on their decision-making at higher levels. The funding available for both parties to participate in collaboration (and even consultation) is insufficient. The root causes of these issues go back to the different perspectives on the purposes of the relationship. Māori, who see their involvement as a right due to them, and as a way of adding value to park management, expect to have their opinions valued and their time compensated. Policy makers at DOC, who fundamentally sees Māori involvement as a subcategory of community involvement, think that offering Māori the opportunity to have their opinions heard is an adequate form of participation. Local DOC staff seem to be more open to fuller power-sharing, but are unable to initiate new relationship structures.

2. The Political Frame

Bolman and Deal describe the political frame as one in which:

> [p]arochial interests compete for power and scarce resources. … Bargaining, negotiation, coercion, and compromise are a normal part of everyday life. Coalitions form around specific interests and change as issues come and go. Problems arise when power is concentrated in the wrong places or is so broadly dispersed that nothing gets done. Solutions arise from political skill and acumen.[51]

The relevant kind of power in the context of park management can be separated into two kinds: the power to make decisions and the power to influence those making decisions. The degree of real power sharing in decision-making often surfaces as an issue in the co-management literature.[52] Political scientists Arun Agrawal and Clark Gibson have indicated three important political processes to examine in this regard: firstly how rule-making for resource use and conservation is negotiated, secondly how those rules are implemented, and lastly how disputes are resolved.[53]

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[51] Bolman and Deal, *Reframing Organizations,* 16.
[52] See for example Arun Agrawal and Clark C. Gibson, "Enchantment and Disenchantment: The Role of Community in Natural Resource Conservation," *World Development* 27, no. 4 (1999): 638; Stan Stevens, "Lessons and Directions" in ed. Stan Stevens, *Conservation Through Cultural Survival*, 277.
[53] Agrawal and Gibson, "Enchantment and Disenchantment," 638.

In New Zealand all these processes are fully controlled by the government agency. Māori must be consulted in the process of composing statutory policy documents, and in the implementation of rules that are considered to particularly affect them, but have no veto or final decision-making power. Their only recourse in the event that a dispute cannot be resolved informally, is to go completely outside the park management process to the courts and the Waitangi Tribunal. The article written on New Zealand co-management by Todd Taiepa and others identified unwillingness on the part of government agencies to share power with Māori, and argued this was holding back true co-management in New Zealand.[54] In submissions and interviews, several claimants argued that such unwillingness exists, but is located at departmental headquarters, rather than at the conservancy level.[55] Other claimants were critical of local management, however. Some submissions, particularly from groups that do not have well-established relationships with DOC, argued that local DOC staff deliberately avoided working with their particular group.[56]

While Māori have no power to make or to veto decisions, they have several channels of power in terms of influencing those decisions, and they tend to make good use of these. They have some degree of persuasive power, as it is clear that DOC has interests in maintaining a good relationship with Māori. Māori also have the option of legal action, through the courts or the Waitangi Tribunal, if they feel that DOC has not honoured its legislative duty to give effect to the Treaty of Waitangi, although this option is lengthy and expensive. At times certain Māori groups and individuals have also had high level political connections which have made local relationships less important:

> PG: Recognition of iwi changes from one government to another, too. At the moment for example, iwi think government listens to them very closely, especially the deputy prime minister.
>
> KM: And in terms of the way that's affecting relationships…?
>
> PG: Well, at times like this there's not much point getting involved in local management.
>
> KM: Because it's all happening at a higher level?

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[54] Taiepa et al., "Co-Management of New Zealand's Conservation Estate by Maori and Pakeha: A Review," 240.
[55] Brief of Evidence of Keith Wood, #A64, paragraph 55, 11.
[56] For example Brief of Evidence of Rangi Bristol, #D40; Closing submissions of Tamahaki , Wai 1130, #3.3.19, May 14, 2007, paragraph 33, 83.

PG: Yes, they can go straight to the deputy prime minister.[57]

In certain places and cases Māori have property rights that can be used as leverage. There is an ongoing dispute over guiding on the Tongariro Alpine Crossing, where tāngata whenua want a much greater role in guiding and in the assessment of concession applications.[58] A small part of the track crosses the Ketetahi block, a roughly thirty-nine hectare piece of land which is owned by a Māori Trust Board, the Ketetahi Trust.[59] As the Trust could potentially close access to the section of the track that crosses their land there have been extensive negotiations between the Conservancy and the Ketetahi Trust. DOC also has the option of redirecting the track to go around the Ketetahi block, and both parties have interests in remaining in a good relationship. It is a complex political situation, and a good example of the various different means of leveraging power to which parties have access beyond the direct lines of authority.

The internal politics of both the conservation agencies and the indigenous groups can affect their relationship and ability to work together. The internal politics of DOC is sometimes complicated. DOC has a highly divisionalised structure, with each conservator having considerable discretion over issues within their conservancy, and there can be tensions between local staff and staff at the Wellington headquarters over who is better-placed to make particular decisions. I was present at a Waitangi Tribunal hearing for the Flora and Fauna claim during which one DOC Conservator described his conservancy's practices of avoiding interference from headquarters as "government-proofing."[60]

Several writers have emphasised the importance of understanding the micro-politics that goes on within the often simplistic idea of the "community."

> The way that stakeholders are identified and represented in management regimes is crucial to ensure local participation. One set of issues revolves around how representatives for co-management bodies are selected from within community-based groups, whether a range of local viewpoints

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[57] Interview with Tongariro-Taupō Conservator, July 22, 2008. The Deputy Prime Minister at that time was the Labour Party's Michael Cullen.
[58] Brief of Evidence of Tyronne Smith, #G24, paragraphs 40-7, 12-5; Paul Blaschke and Pauline Whitney, "Establishing Integrative Use Limits on the Tongariro Crossing, Tongariro National Park. Final Report.,"(2007), vi, 23-4, 35, 39, http://www.tba.co.nz/kete/case_studies/pdf/tongariro_crossing_case_study.pdf.
[59] The Ketetahi Block and the Tongariro Alpine Crossing are both marked on Appendix C: Map of Tongariro.
[60] Crown hearings for the Flora and Fauna inquiry, Waitangi Tribunal Unit, Wellington, December 2006.

> based on differences of resource use arising from gender, class, caste, or other differences is taken into account.[61]

Brosius, Tsing and Zerner ask whether granting collective rights to groups which may have relatively powerless sub-groups within them, such as women, or the poor, might have negative effects.[62]

Which groups, and which members of those groups, should be engaged with can be difficult to know. Coombes and Hill stress this difficulty and the conflicts that can ensue from the process of choosing co-management partners. A proposal to establish collaborative management of a small area within Te Urewera National Park foundered on this particular problem:

> Inter- and intratribal competition for the right to be a comanagement partner led to fears of conflict, stimulating withdrawal of all parties. … All accepted that it was inappropriate for DoC to choose its comanagement partner and, if iwi could not settle the matter internally, that abandonment of the formal agreement was preferable to public struggles for authority.[63]

Questions of whether consultation is being conducted at the right level, with people who have the political mandate, and with all the relevant groups, are difficult for DOC to answer. As in the example of Te Urewera above, the common consensus is that it is not appropriate for DOC to adjudicate matters of internal Māori governance. Agreements made with the wrong, or too few parties, however, are likely to run into problems, so these questions are also hard for DOC to ignore. The suggestion made by Coombes and Hill, to leave agreements unwritten and open, may in some cases be a practical solution, although it does little to unsettle the existing power imbalances within the communities. Knowing something of the internal politics of communities assists in creating fair and functioning co-management arrangements.

Another key influence is the politics happening *outside* the process of collaboration. Groups and individuals may be pursuing agendas outside the collaboration which affect the relationships inside it. This is certainly true in Tongariro, where the National Park inquiry and other Treaty claims and negotiations take up a lot of the Trust Board's time.

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[61] Castro and Nielsen, "Indigenous People and Co-Management: Implications for Conflict Management," 236. See also Agrawal and Gibson, "Enchantment and Disenchantment: The Role of Community in Natural Resource Conservation." 636-7.

[62] J. Peter Brosius, Anna Lowenhaupt Tsing, and Charles Zerner, "Representing Communities: Histories and Politics of Community-Based Natural Resource Management," *Society & Natural Resources* 11, no. 2 (1998): 165.

[63] Coombes and Hill, "''Na Whenua, Na Tuhoe. Ko D.O.C. Te Partner''," 144-46.

Te Puni Kōkiri, in their reviews of DOC's relationship with Māori, noted that claims had a strong effect on relationships:

> Most iwi and hapū are involved with Treaty claims processes which include sections of the public conservation estate. It is very difficult for them to separate those claims from overall issues associated with the Department's management of the public conservation estate.[64]

This observation was repeated in the follow-up review in 2002.[65] As already mentioned, Māori authorities are often busy fielding multiple demands from agencies for their input, as well as their core business of fostering tribal development. DOC also has other interests to pursue; its mandate includes conservation work across the conservancy, advocacy efforts, communication and interpretive roles, fundraising and negotiating with various other groups which have interests in the area.

In summary, the political power balance at Tongariro is firmly in favour of DOC. Māori, however, have a history of using the available points of leverage to good effect. While this is obviously not an ideal situation, perhaps for *either* party, Māori political skill has achieved several gains for them, albeit small and incremental ones. Particularly since 1987, the efforts of local Māori to make the government listen to their concerns allowed some sophisticated local relationships to grow where relationships had originally been conflicted. This history will be detailed in chapters five, six, and particularly chapter seven.

3. The Symbolic Frame

Bolman and Deal describe the symbolic frame as one in which the making of meaning is the central focus.[66]

> It abandons assumptions of rationality prominent in other frames and depicts organizations as cultures, propelled by rituals, ceremonies, stories, heroes, and myths rather than rules, policies, and managerial authority.[67]

Beliefs and attitudes underlie concepts of environmental degradation, good management, and the relative value of resources. This is recognised in the co-management literature:

> The ideas, ideologies, and beliefs brought to bear on problem definition by different stakeholders can substantially influence problem perception.

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[64] Te Puni Kōkiri, *Key Stakeholder Interviews*, 11.
[65] Te Puni Kōkiri, *Follow up Review,* 11.
[66] Bolman and Deal, *Reframing Organizations,* 253.
[67] Ibid., 16.

> Religious beliefs and moral conviction can be important in structuring understanding, both among local people and scientists. Ideas derive legitimacy from received wisdom about theory … and from ideas outside formal science, including informal or "folk" knowledge. Policy narratives or story lines can exert a powerful influence on official decisionmakers' perceptions of resource management problems.[68]

Beliefs and attitudes also affect how each party views and relates to the other, particularly their knowledge and interpretation of their shared history. The National Park inquiry has brought this history and these interpretations to the forefront. An inquiry is a kind of contest of meaning, each side trying to present a winning narrative to the Tribunal members. In chapters four to seven I discuss this process in detail. In this section I describe some of the key features of DOC and Māori beliefs and attitudes regarding the park and each other. This section has two parts. In the first I address the attitudes that DOC and Māori have towards the land and its management, and in the second I look at the parties' attitudes towards each other.

Mountains and Management

The attachment people have to land is full of myths and symbolic meanings. As environmental historian Eric Pawson puts it:

> …mountains are not neutral landscapes but features of the environment employed to various social ends. They are, in other words, charged with meanings, even if to Pākehā these meanings have tended to be more detached than for Māori.[69]

Both Pawson and Jacinta Ruru say that the Pākehā relationship with mountains has evolved from fearfulness to an appreciation of their beauty and intrinsic value.[70] Ruru describes the Māori connection to mountains thus:

> The environmental ethic [of kaitiakitanga] has ensured that Māori interact and care for mountains and resources found on mountain slopes as taonga (treasures). It is an ethic that embodies the historical, spiritual and cultural association with land. Through oral tradition and practical observation, this knowledge is passed on to the next generation. These practices are absolutely vital for Māori well-being and cultural survival.[71]

In the National Park inquiry many claimants described their deep connection to the mountains, and accused the Crown of past and continuing mismanagement of the park. The lawyer-led closing submissions for Ngāti Tūwharetoa contended that the values of

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[68] W.M. Adams et al., "Managing Tragedies: Understanding Conflict over Common Pool Resources," *Science* 302, no. 5652 (2003): 1915.
[69] Eric Pawson, "The Meanings of Mountains," in *Environmental Histories of New Zealand*, ed. Tom Brooking and Eric Pawson (Melbourne: Oxford University Press, 2002), 150.
[70] Pawson, "The Meanings of Mountains," 136-8; Ruru, "Indigenous Management of Mountains," 116-7.
[71] Ruru, "Indigenous Management of Mountains," 116.

Ngāti Tūwharetoa and the Crown with respect to the environment were so different as to be irreconcilable:

> These submissions ask the Tribunal to accept a straightforward proposition: given the dichotomy between the cultures, it is conceptually impossible to reconcile the Crown's aspirations for the Tongariro National Park with Ngati Tuwharetoa's tikanga and values. It is misconceived, therefore, for the Crown to submit that there was congruence between Te Heuheu's objective to protect the tapu nature of the Peaks, and the Crown's objective to preserve the special character of the mountains for all time for the nation.[72] In both practice and theory, the objectives were fundamentally at odds then and remain so now.[73]

Despite this strong statement of the differences between government and Māori values in relation to the environment, the Tūwharetoa closing submissions do allow for the possibility of working together through these differences, specifically requesting a co-management model for such a relationship:

> In seeking co-management that will enable the mountains to be managed in accordance with the values of tangata whenua, Ngati Tuwharetoa acknowledge that much water has passed under the bridge since 1887. It is recognised that it is not going to be possible to return the mountains to their pristine untouched state. That does not mean, however, that the status quo should prevail. These are complex issues that need to be worked through within Ngati Tuwharetoa, as well as without – with Ngati Rangi and the other iwi and hapu that whakapapa [trace descent] to the mountains, and finally with the Crown.[74]

The Crown closing submissions contended that DOC and Māori had many values in common, and a proven ability to work through differences.[75] In an interview, the then Conservator, Paul Green, said that of all the people the local conservancy worked with, they shared more views with tāngata whenua than any other group.[76] This was true of the multi-party negotiations over the management of a looming lahar threat (a lahar is a destructive mudslide from a crater lake) on Ruapehu from 1995-2007, where Māori and DOC were united against the opinion of many other parties involved.[77]

DOC runs a course for new staff that aims to teach them more about Māori perspectives. The course is called the Pūkenga Atawhai, and is run by the Pou Kura Taiao. It lasts a week, and is hosted by different hapū at different marae across the country, so that DOC staff are able to learn, directly from the tāngata whenua, some of

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[72] Crown Opening Submissions, #3.3.17, paragraph 36.
[73] Closing submissions of Ngati Tuwharetoa, #3.3.43 paragraph 8.9, 166. Tikanga literally means 'rightness,' and is often translated as customs, rules, or protocol.
[74] Ibid., paragraph 8.131, 204.
[75] Closing Submissions of the Crown, "Chapter Nine: Park Management," paragraph 106, 30.
[76] Interview with Tongariro-Taupō Conservator and DOC Manager 2.
[77] This negotiation is detailed in chapter seven.

their particular perspectives, as well as the general course content delivered by the Pou Kura Taiao. The group stays and sleeps on the marae, and attends classes during the day. The content covers practical questions of how to properly behave at marae, and how Māori authorities operate, as well as more philosophical and historical issues regarding cultural worldviews and interpretation of the Treaty.

A DOC staff member at the Wellington Conservancy had this to say about his experience at a Pūkenga Atawhai in 2009:

> We left with our brains bursting with both fresh and ancient information, and also with the knowledge that probably, we would soon be putting this new information to use in each of our roles. Since treaty settlements began, we've had more and more to do with Māori, and if you look across the Department, we probably interact on a near-daily basis. Most of our core business at DOC will involve Māori at some time, and Te Pūkenga Atawhai goes a long way towards the strong relationships we now enjoy with iwi right across Aotearoa.[78]

This was written as a piece for DOC's blog, so there is reason for the review to be glowing, but, having attended a Pūkenga Atawhai course myself during my fieldwork period in 2007 I can provide a more disinterested second opinion that it is a unique experience. One of the Conservation Board members I interviewed also specifically mentioned the Pūkenga Atawhai and how enjoyable it was.[79]

The Pūkenga Atawhai is perhaps a cause, but is certainly an effect, of a strong commitment on the part of DOC to understand and incorporate Māori environmental perspectives. How well they achieve this is a different question, and how well Māori perspectives can be embraced when power-sharing with Māori is not, is another. Some of the claimants who had close contact with DOC gave them limited credit for these efforts:

> Although I acknowledge that the Department is the foremost Crown Agency in learning/teaching its staff Maori values and philosophy, the gap [between DOC and Māori interpretations of section 4 of the Conservation Act] still exists.[80]

Although there are differences between the way Māori relate to the land, and how they wish it to be managed, and the attitudes and opinions of DOC staff, it is difficult to generalise upon them. For example, some Māori object to the use of 1080 poison for

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[78] Sam O'Leary, "Marae Life: Education by Immersion," November 5, 2009. http://blog.doc.govt.nz/2009/11/05/marae-life-education-by-immersion/.
[79] Interview with Conservation Board Member 4, March 2007.
[80] Brief of Evidence of Tyronne Smith, #G24, paragraph 20, 9

pest control, but others support its use, and there are also many Pākehā who object to the use of the poison.[81] Some Māori object to the ski fields on the mountains, others accept them, and even ski on them.[82] DOC staff do not speak with one voice either, and some are more sympathetic than others to Māori interests. Importantly, there is a long history of living and working alongside each other, and a track record of reaching compromise.

Attitudes towards each other

The attitudes of DOC regarding Māori and Māori regarding DOC are coloured by the history of colonisation, and each party's knowledge and interpretation of that history. I discuss this in detail in the historical chapters of my thesis, but address some broad issues here. Wondolleck and Yaffee identify that "attitudes and perceptions" create obstacles to successful collaboration. They argue that the baggage people carry from past experiences, and the often unsubstantiated presumptions they hold about each other, must be dealt with before effective co-management can occur.[83] Fisher and Ury, on the other hand, have argued that trust is not a necessary condition of successful negotiation, and can in fact be a healthy defence against being exploited.[84] This is in some ways a more hopeful conclusion in these contexts, where legitimate grievances have been held for more than a century and cannot be easily overcome.

The understanding and awareness of history is often different between Māori and DOC. DOC tends to think of itself as an organisation whose history goes back to 1987 and no further, whereas for Māori it is yet another government agency in a chain going back to the nineteenth century, separating them from control of their ancestral land. Brad Coombes and Stephanie Hill argue that proposals for co-management fail to historicise the relationship between the state and Māori, by refusing to address the question of whether conservation agencies are legitimate partners at all. They argue that successful co-management tends to follow, rather than precede, the resolution of land grievances.[85]

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[81] Environmental Risk Management Authority, *The Reassessment of 1080: An Informal Guide to the August 2007 Decision of the Environmental Risk Management Authority,* (Wellington: Environmental Risk Management Authority, 2007), 12-3.
[82] Brief of Evidence of Rosita Rauhina Dixon, Wai 1130, #D35(a), May 5, 2006, paragraph 23, 10; Affidavit of Brian Hauauru Jones, Wai 1130, #I8, February 12, 2007, paragraph 3, 2. Some are torn between. Rangihopuata Rāpana wrote in his evidence he believed no-one should go up on the mountains, but he felt drawn up there to keep an eye on the activities on the ski field. Brief of Evidence of Rangihopuata Rāpana, Wai 1130, #D37, May 5, 2006.
[83] Wondolleck and Yaffee, *Making Collaboration Work*, 159-62.
[84] Fisher and Brown, *Getting Together*, 117-21.
[85] Coombes and Hill, "'Na Whenua, Na Tuhoe. Ko D.O.C. Te Partner'," 137.

Mistrust about each other's motives in this context is probably unavoidable, and to hope that it can be overcome in any way other than through long years of successful interaction is unrealistic. Wondolleck and Yaffee argue that the breakdown of stereotypical assumptions usually occurs naturally in the process of negotiating with each other, given time.[86] They also warn that the structure of relationship interactions has to foster, or at least not disrupt, positive interaction, because "[e]xtreme polarization can occur when intergroup attitudes are reinforced by adversarial processes."[87] As I argue in the following chapters, this occurs in the Tribunal, but as it is a temporary process it may not be harmful in the long term.

4. The People Frame

Bolman and Deal describe what they call the 'human resource frame' as one in which an organisation is "an extended family, made up of individuals with needs, feelings, prejudices, skills and limitations."[88] Wondolleck and Yaffee also use the metaphor of a family to describe the ideal dynamics between participants in a collaborative initiative:

> Toledo Metroparks official Michelle Grigore suggests that a good way to look at partnerships like the Oak Openings project is as a family: "Sometimes you love them, and sometimes…." Just like a family, successful collaborative efforts pay attention to the bonds that unite them and respect them even when tempted to find fault or turn away.[89]

The role of personal relationships in co-management has recently received a lot of attention in the literature on co-management. Anthropologist David Lawrence, in his book on the making of Kakadu National Park, sees joint management as "a continuing, evolving process of dispute resolution, negotiation and compromise."[90] He advocates for the importance of supporting the relationships that sustain the process:

> The future success of joint management will be determined not by a commitment to legal and administrative frameworks but through building and maintaining Aboriginal and non-Aboriginal relationships.[91]

Toni Bauman and Dermot Smyth, in a report on partnerships in Australian protected areas, identify, as a 'critical success factor,' the "productive day-to-day, on-ground working relationships and mutual respect between the individuals involved in protected

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[86] Wondolleck and Yaffee, *Making Collaboration Work*, 159-62.
[87] Ibid., 60.
[88] Bolman and Deal, *Reframing Organizations,* 16.
[89] Wondolleck and Yaffee, *Making Collaboration Work,* 166.
[90] David Lawrence, *Kakadu: The Making of a National Park* (Melbourne: The Miegunyah Press, 2000), 264.
[91] Ibid.

area partnerships between and across all areas of management."[92] In her chapter on Nitmiluk National Park, Bauman emphasises the importance of recognizing the "emotional, procedural and substantive needs of parties in the decision-making process."[93] Wondolleck and Yaffee also argue that it is vital to recognise that partnerships are made up of individuals:

> "…partnerships are people joined through relationships. While people may represent organizations, agencies, or occupations in a collaborative process, they are fundamentally individual human beings. The relationships that form the core of collaborative partnerships are between those individuals, not between organizations. Yet people are only human. They can get angry, be affronted, and become discouraged. Hence, human emotions and fears and the tendency to develop stereotypes and misperceptions pose challenges to effective collaboration. On the other hand, the development of understanding, empathy, trust, and motivation can foster collaborative interaction."[94]

Fisher and Ury also make this point about the ability of personal relationships to foster or stymie collaboration.[95] Personal relationships can transcend problems in the other frames, or create problems when all should be smooth sailing. Research has shown that people's social networks have a strong effect on their attitudes and beliefs, more so than their formal affiliations with particular groups or organisations.[96]

Much of the response to these revelations has been to try to map and categorise these processes of interaction. Definitions of 'social capital' sort relationships into those between individuals in the same group or institution ('bonding'), relationships between people in different groups and organisations ('bridging') and relationships between individuals at different management levels ('linking').[97] This measuring process may provide some useful information as to how closely different agencies are networked, but fails to adequately capture what makes relationships important, which is their ability to create opportunities for compromise where a situation would otherwise be impassable. It also suggests that relationships are simple enough to reduce to connecting lines, and are able to be measured in numbers. It is hard to imagine how one could properly

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[92] Toni Bauman and Dermot Smyth, "Indigenous Partnerships in Protected Area Management in Australia," (Canberra: Australian Institute of Aboriginal and Torres Strait Islander Studies and the Australian Collaboration, 2007), xiv.
[93] Bauman, "Nitmiluk National Park: Joint Management as Process and Balancing Interests," in Bauman and Smyth, *Indigenous Partnerships,* 70.
[94] Wondolleck and Yaffee, *Making Collaboration Work*, 159.
[95] Fisher, Ury and Brown, *Getting to Yes,* 19.
[96] Prell et al., "Competing Structures, Competing Views: The Role of Formal and Informal Social Structures in Shaping Stakeholder Perceptions," unpaginated.
[97] For example R. Plummer and J. FitzGibbon, "People Matter: The Importance of Social Capital in the Co-Management of Natural Resources" (2006), 53.

quantify things like trust, respect, reciprocity and commitment or measure the impact of an individual leader or relationship broker.

The reports of participants themselves are the richest data on the health and sophistication of relationships. Many writers observe that participants in collaborative initiatives emphasise the importance of personal relationships. Bauman noted that many people involved in co-management identify relationships as the *most* important part of joint management.[98] Wondolleck and Yaffee also observed this, and said that the participants' realisation of the importance of relationships increased as time went on.[99]

Wondolleck and Yaffee provide examples in their book of how relationships can create solutions and new possibilities.[100] At Tongariro there were many examples of this. The Conservator described how the people who were more involved in liaison with Māori were less affected by the animosities which are to some degree required in the inquiry process:

> KM: … *is there a difference there between people who are more involved in park management and people who are less involved?*
>
> PG: Yes, people who are less involved, they haven't been on the trust board or been key contacts, are probably impacted by the process more, in terms of relationships. They don't see what's going on, the day-to-day stuff. And it's the same with us, the staff who are less involved get more upset at some of the things they see in evidence, than I do, because I understand the process.[101]

Several of the key staff involved in the local conservancy, including the conservator and two out of the three area managers, had been working in the area for around twenty years each at the time of my research, which was noted by the Tribunal researchers Nicholas Bayley and Mark Derby as a strength in local relationships.[102] This was not true of many of the other staff in the conservancy. The turnover of DOC staff was a matter of contention in the inquiry. One claimant complained that his iwi spent a lot of time training new members of DOC to "a level of vision and understanding to be useful to our partnership."[103]

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[98] Bauman, "Nitmiluk National Park," 47. See also Wondolleck and Yaffee, *Making Collaboration Work,* 159; Michael A. Schuett, Steve W. Selin, and Deborah S. Carr, "Making It Work: Keys to Successful Collaboration in Natural Resource Management," *Environmental Management* 27, no. 4 (2001).
[99] Wondolleck and Yaffee, *Making Collaboration Work*, 159.
[100] Ibid., 167.
[101] Interview with Tongariro-Taupō Conservator, July 22, 2008.
[102] Nicholas Bayley and Mark Derby, *Tongariro National Park Management from 1980 to the Present: A Scoping Report*, Wai 1130, #A6, (Wellington: Waitangi Tribunal, 2004), 21-2, 38.
[103] Brief of Evidence of Keith Wood, #A64, paragraph 63, 13.

The importance of project-based relationships was noted by two of my interviewees from DOC.[104] The Pou Kura Taiao argued that the presence of a clear purpose for the relationship helped to unite and motivate the individuals involved, and built up trust over time.[105] Wondolleck and Yaffee also argued that concrete collaborative projects were important to overall success. There was complaint in the inquiry, however, saying DOC had failed to take these positive examples of cooperation to the next level, a more comprehensive collaboration over conservancy-wide issues and decisions.[106] This criticism has mainly been levelled at DOC headquarters, rather than at conservancy staff.

Relationships need time, and an institutional and political environment that supports, or at least does not provide an obstacle, to negotiation.[107] A personnel policy that encourages staff in key roles to stay for long periods is an obvious example of a supportive policy. Careful hiring policies, geared towards selecting diplomatic staff with a good understanding of both cultures involved in the collaborative initiative, have also been advocated.[108] Several writers have suggested that opportunities to socialise informally are helpful, and some go so far as to suggest negotiation training, though whether this is effective in practice has not been researched.[109]

At Tongariro the longevity of key relationships has been a real strength. Both parties have shown a willingness to work together and an ability to transcend their differences and reach agreement. These relationships were poorly supported by DOC policies which did not allow locals to set goals and protocols for their own relationships, or to resource the level of collaboration in which local parties are willing to engage.

Conclusion

The underlying problems in relationships between DOC and tāngata whenua at Tongariro is the confusion over what that relationship is meant to achieve, and the differing opinions of Māori and DOC in this regard. The relationship model of

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[104] Interview with Tongariro-Taupō Pou Kura Taiao, March 2, 2007; Interview withTongariro-Taupō Conservator, March 4, 2008.
[105] Interview with Tongariro-Taupō Pou Kura Taiao, March 2, 2007.
[106] Keith Woods, cross-examined by Mark McGhie, Draft Transcript of National Park Inquiry Hearing 1, Wai 1130, #4.1.6, (Maungarongo Marae, Ohakune, February 20-23, 2006), 29.
[107] Wondolleck and Yaffee, *Making Collaboration Work*, 166-7; Richard Margerum, "Integrated Environmental Management," 154-5.
[108] For example Bauman, "Nitmiluk National Park," in Bauman and Smyth, *Indigenous Partnerships,* 52.
[109] Wondolleck and Yaffee, *Making Collaboration Work,* 218-9; Schuett, Selin, and Carr, "Making It Work," 592; Bauman and Smyth, *Indigenous Partnerships,* xvii.

consultation fails to meet Māori expectations about the level of power-sharing they believe is appropriate to that relationship. This is further exacerbated by the lack of ability on the part of DOC's conservancy-level staff, to innovate with new relationship structures. The lack of flexibility and fear of setting precedents is hampering development in relationships, as is the lack of funding available for investing in these relationships, and the pressure to reach decisions quickly. The history of Tongariro's establishment and development sheds light on the evolution of these features.

Some of the strengths of the DOC-Māori relationship at Tongariro during my fieldwork were the length of key local relationships, the willingness of both parties to work with each other, and the skill of Māori leaders, who are adept at using the political strategies available to them to advance their interests. Another important strength is the reasonably high level of commonality the parties have in their environmental values.

During the National Park inquiry, participants were preoccupied with historical issues. The interpretations of this history coloured the depictions of the current relationship. In the next chapter I discuss the way the inquiry process privileges certain depictions of the Crown-Māori relationship over others. The subsequent historical chapters trace the development of the relationship at Tongariro and the way those historical periods were depicted in the course of the claim.

Chapter Four: Tribunal Inquiries, Beach Crossings

At the time of my research, the National Park inquiry was in the hearings phase. Tribunal inquiries are important events, and they have a strong effect on the relationships of people in the communities involved. According to the criteria for a good relationship process identified in the previous chapters of this thesis, the inquiry constitutes a 'problem' in relationships because it is making it difficult for the parties to work together, but its long-term consequences may well end up creating much greater strengths. An inquiry, and the settlement process which follows it, is a 'crossing,' as Greg Dening describes, and is intended to remake the relationships between the government and the claimants. Dening also explains that these crossings and remakings can be painful.[1]

The Waitangi Tribunal has received plenty of scholarly attention, particularly from historians. Their focus, however, has mainly been on the kind of history the Waitangi Tribunal produces in its reports, and how similar or dissimilar it is to academic history. I draw from their insights into the ways the Crown-Māori relationship is characterised during historical debates, but my focus is on the submissions made by Crown and claimant parties, rather than the reports produced by the Tribunal. I am concerned with what legal academic Paul McHugh has pointed out is "the more fundamental issue"[2] of the ongoing relationships between government and Māori, specifically how those relationships are described in the inquiry, and how an inquiry affects those relationships in the short term. These questions have thus far received little attention from New Zealand scholars.

The Waitangi Tribunal

The Waitangi Tribunal is designed to hear claims, brought forward by Māori, regarding alleged Crown breaches of the Treaty of Waitangi. As long as the claim is brought forward by Māori, and as long as it is not 'frivolous or vexatious,' or solvable by other more obvious legal means, the Tribunal must inquire into it.[3] The inquiry determines

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[1] Dening, *Islands and Beaches,* 3.
[2] Paul McHugh, "Aboriginal Identity and Relations in North America and Australasia," in *Living Relationships, Kokiri Ngatahi: The Treaty of Waitangi in the New Millenium*, ed. Ken S. Coates, Paul McHugh, and (not editors) (Wellington: Victoria University Press, 1998). 116.
[3] *Treaty of Waitangi Act* 1975, section 7.

whether the Crown has breached or is breaching the principles of the Treaty of Waitangi, and whether the claimant group or groups, are prejudicially affected by those past or continuing breaches.[4] At the end of the inquiry a report is published, and if the Tribunal has found in favour of the claimants, the claim proceeds into a negotiation phase with the Office of Treaty Settlements, a wing of the Justice Department which negotiates claims on behalf of the Crown.

The Tribunal was established by the *Treaty of Waitangi Act* 1975, in response to gathering Māori protest about their contemporary and historical treatment by the state. Its creation was largely the effort of the then Minister for Māori Affairs, Matiu Rata. In its first form the Tribunal could only inquire into Treaty breaches post-1975, which was a major disappointment to Rata himself, as the root causes of the grievances Māori were voicing in the 1960s and 70s were historical.[5] The Tribunal made no recommendations on the first claim that came before it, and little happened after that for several years.

In 1981 Edward Taihakurei Durie became the chief judge of the Māori Land Court, and therefore also the chairperson of the Tribunal. Durie radically reshaped the Tribunal's procedure and outlook. The Tribunal adopted consciously 'bicultural' processes, holding claimant hearings on local marae, and allowing submissions to be made in either English or Māori. The first of the hearings under Durie's leadership were the Motunui-Waitara hearings in 1982. The Motunui-Waitara claim was brought forward by Aila Taylor on behalf of Te Atiawa iwi of Taranaki, on the west coast of the North Island. The claimants were concerned about the granting of the right for a synthetic fuels plant to discharge waste out of a new pipeline at Motunui. This was exacerbated by the fact that there was already a pipeline at nearby Waitara that had polluted the surrounding reefs, and the reefs at Motunui were among the few left unpolluted. The issue attracted widespread attention.

The Tribunal found in favour of the Motunui-Waitara claimants, recommending that the outfall be abandoned and the alternative of land based treatment be looked into. It also called for greater recognition of Māori cultural values with respect to water resources in the legal system. The Muldoon Government rejected the Tribunal's recommendations outright. This sparked such an outcry from the media, the Pākehā left and Māori, that the Government was forced to about turn and accept the Tribunal's suggestions to

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[4] Ibid., section 6.

[5] Sharp, *Justice and the Maori*, 75. Not long afterward Rata broke from the Labour Party and formed a Māori political party called Mana Motuhake (which is often translated as "separate authority").

abandon the plans for an outfall.[6] The Motunui-Waitara inquiry was a turning point in the importance of the Tribunal, and encouraged other Māori to file claims.[7] It also set a precedent, in the early claims, for cases of environmental degradation to be brought to the Tribunal. The environmental movement was in full swing in this period, and environmental groups often attended hearings and gave submissions in support of the claimants' arguments.[8]

In 1985 Parliament amended the 1975 Act to allow the Tribunal to investigate claims right back to the signing of the Treaty in 1840. By mid 1989 a hundred claims had been filed to the Tribunal; two hundred had been filed by February 1991.[9] The Tribunal was expanded to seventeen members and the process of hearing historical claims began in earnest.[10] The expansion of the Tribunal's scope led to much more complex inquiries, in which concern over environmental degradation was only one of a huge number of features in a claim. The previous alliance between environmental groups and Māori channelled off into separate streams. Environmental groups campaigned for, and achieved, the establishment of a government agency to advocate conservation, DOC, and Māori efforts went into their historical claims.[11]

Several Acts passed during the 1980s included clauses referencing 'the principles of the Treaty of Waitangi.' The earliest of these were the *Environment Act* 1986, the *State Owned Enterprises Act* 1986, and the *Conservation Act* 1987, which established the Department of Conservation and set its direction. The strength and meaning of these clauses were tested in court over the following years. The watershed case in this regard was the so-called 'Lands Case.' in which the New Zealand Māori Council succeeded in achieving an injunction on the sale of government assets to private interests under the *State Owned Enterprises Act* 1986, on the grounds that the land would therefore be unavailable for settlement of Treaty claims and this would be a violation of the

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[6] See Ranginui Walker, *Ka Whawhai Tonu Matou, Struggle without End* (Auckland: Penguin Books, 1990), 248-9; Sharp, *Justice and the Maori*, 77; David Young, *Our Islands, Our Selves: A History of Conservation in New Zealand* (Dunedin: Otago University Press, 2004), 194.

[7] Paul Hamer, "A Quarter-Century of the Waitangi Tribunal," in *The Waitangi Tribunal: Te Roopu Whakamana I Te Tiriti O Waitangi*, ed. Janine Hayward and Nicola R. Wheen (Wellington Bridget Williams Books, 2004), 5.

[8] Environmental groups made supportive submissions at the Motunui-Waitara, Kaituna and Manukau Tribunal hearings. See chapter seven for more detail.

[9] Hamer, "A Quarter-Century of the Waitangi Tribunal," 6.

[10] Though this was the beginning of a new wave of historical claims, it is important to note that most of the claims filed to the Tribunal had already been through other courts, at other times. Litigation over these issues is not new. See Belgrave, "Something Borrowed."

[11] Keri Mills, "The Changing Relationship between Māori and Environmentalists in 1970s and 1980s New Zealand," *History Compass* 7, no. 3 (2009).

principles of the Treaty of Waitangi, protected under section nine of the Act.[12] As a result of this legal victory memorials were placed on land marked as potentially subject to future Treaty claims, allowing those lands to be compulsorily bought back by the government for use in settlements. The Tribunal also gained powers to insist upon the return of lands thus earmarked, though these special powers have only once been used.[13]

Due to the increasing length of inquiries of the 1990s, members of the Tribunal, particularly judges Joseph Williams and Carrie Wainwright, reworked the Tribunal's procedure to make it more efficient. This involved earlier participation from the Crown, full pleadings in terms of acknowledgment and denial of alleged Treaty breaches, and a shortened timeframe. Lawyers responded to this by collaborating more thoroughly on issues in common to all claimant parties, and agreeing for individual lawyers to specialise on themes. Richard Boast has argued that these gains in efficiency benefited all parties, but that the increasing reliance on the expertise of lawyers could be seen as a partial disenfranchisement of claimants.[14]

Tribunal procedure: the principles of the Treaty of Waitangi

The phrasing of the 1975 *Treaty of Waitangi Act* stated that the Tribunal should advise upon the "practical application of the principles of the Treaty of Waitangi."[15] This choice of words was possibly designed to ensure the abilities of the Tribunal did not extend to the *literal enforcement* of the *provisions* of the Treaty. Andrew Sharp suggests that the government purposefully made the Tribunal weak in this way, consistent with other limitations that it put in place: the Tribunal could merely recommend action, and its inquiries were limited to post-1975 events.[16] The legislation allowed the Tribunal to determine what the principles of the Treaty were. Political scientist Janine Hayward explains that:

> The Tribunal's jurisdiction is broad in this regard – it has the authority to establish the benchmarks against which action is judged, and has the

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[12] Section 9 states: "Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi."
[13] In the Turangi Township claim.
[14] Richard Boast, "Waitangi Tribunal Procedure," in *Waitangi Tribunal: Te Roopu Whakamana I Te Tiriti O Waitangi*, ed. Janine Hayward and Nicola R. Wheen (Wellington: Bridget Williams Books, 2004), 61-2.
[15] *Treaty of Waitangi Act* 1975, Preamble.
[16] Sharp, *Justice and the Maori,* 74-5.

> capacity, through its interpretations of the Treaty, to make findings as to whether the Crown has breached Treaty principles.[17]

In its early decisions the Tribunal made a number of general statements about the nature of the Treaty and the way it should be interpreted. The most oft-quoted of these are as follows:

> A Maori approach to the Treaty would imply that its wairua or spirit is something more than a literal construction of the actual words used can provide. The spirit of the Treaty transcends the sum total of its component written words and puts narrow or literal interpretations out of place.[18]
>
> The Treaty was also more than an affirmation of existing rights. It was not intended to merely fossilise a status quo, but to provide a direction for future growth and development. The broad and general nature of its words indicates that it was not intended as a finite contract but as the foundation for a developing social contract. We consider then that the Treaty is capable of a measure of adaptation to meet new and changing circumstances provided there is a measure of consent and an adherence to its broad principles.[19]

The use of stated, though never fixed, 'broad principles' was soon to become the way in which the Tribunal interpreted the Treaty and judged its alleged breaches. This was, as the Motunui-Waitara Tribunal noted, and several academic writers have since agreed, in some respects a necessary measure. The legislation gave the English and Māori versions of the Treaty equal weight, and given that there are substantial differences between the two versions, the legislation would not have been operable had some method of broader interpretation not been sought.[20] The legislation required the Tribunal to mediate between the differences in the two versions and to define the principles of the Treaty.

There is no definitive list of the principles of the Treaty of Waitangi, though there is a useful document produced by Janine Hayward for the Tribunal in 1997 which reviewed the principles identified in the Tribunal and the courts to that date. Some of the most often used and important principles are listed and briefly described below.

> **Partnership,** adapted from the descriptions given in judgments on the Lands Case: the principle that Māori and the Crown should have equal status in their interactions;

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[17] Janine Hayward, "Flowing from the Treaty's Words," in *The Waitangi Tribunal: Te Roopu Whakamana I Te Tiriti O Waitangi*, ed. Janine Hayward and Nicola R. Wheen (Wellington: Bridget Williams Books, 2004), 29.
[18] Waitangi Tribunal, *Motunui-Waitara Report*, paragraph 10.1.
[19] Ibid., paragraph 10.3.
[20] For example F.M. Brookfield, *Waitangi and Indigenous Rights: Revolution, Law, and Legitimation* (Auckland: Auckland University Press, 1999), 152.

> **Kāwanatanga**: the right of the Crown to govern in the interests of all New Zealanders, which must be balanced with the principle of
>
> **Tino rangatiratanga**: the right of Māori to (variously) manage, control or determine their affairs, including their taonga, or all things they hold valuable.[21]
>
> **The duty to act in good faith**, on the part of both Māori and the Crown;
>
> **The right of redress**: that the Crown must provide redress for any injustices it inflicted upon Māori in breach of the Treaty.[22]
>
> **Active protection**, or the duty of the Crown to actively provide for Māori interests;
>
> **The right to development**, i.e. that the Crown must allow for Maori to develop their interests; and
>
> **The duty to consult** with Māori on matters of importance to them.[23]

This is a very brief list of a few of the main Treaty principles the Tribunal uses in its decisions. Hayward lists many more. In each claim lawyers and Tribunal members use principles from previous inquiries, adapt their use to fit new cases, and identify new ideas. Commentators agree that the Treaty principles are "a fluid body of doctrine."[24] The Tribunal decides which Treaty principles are appropriate to the claim at hand, but claimant lawyers also come up with lists of principles that they feel are appropriate, and reference to principles or key phrases such as 'good faith' and 'partnership' sometimes appear in individual submissions. It is hard to know whether these are intended references to the Tribunal's recommendatory process, references to principles included in policy documents, or a product of influence from wider political discourse.

Several of the principles referred to in the above list were drawn from the judgment of Sir Robin Cooke in the Lands Case. In his individual judgment, Cooke wrote:

> The Treaty signified a partnership between Pakeha and Maori requiring each to act towards the other reasonably and with the utmost good faith. The relationship between the Treaty partners creates responsibilities analogous to fiduciary duties. The duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable.[25]

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[21] In claims, the term 'taonga' has covered resources such as fisheries, indigenous species, sacred places, the Māori language, airwaves, geothermal resources and many others.
[22] Hayward identifies this as a subset of an 'overarching principle of exchange' whereby Māori allowed the Crown the right to govern in exchange for the guarantee of their absolute chieftainship/ tino rangatiratanga and the other protections contained in the Treaty.
[23] Janine Hayward, 'The Principles of the Treaty of Waitangi,' appendix to the *Rangahaua Whānui Report*, ed. Alan Ward (Wellington: Waitangi Tribunal, 1997), 486-493.
[24] The phrase comes from Oliver, "The Future Behind Us," 12.
[25] *New Zealand Maori Council v Attorney-General* [1987], 1 New Zealand Law Reports, 641.

He also recommended that the principles be interpreted generously and in the spirit of goodwill. And that is largely what has occurred. Andrew Sharp has described the Tribunal's interpretation of the Treaty thus: "[t]he Treaty simply stands for good relations intended between the peoples."[26]

William Oliver, in a seminal, and critical, article on the Tribunal's historical methods, described Tribunal inquiries as asking three main questions of the evidence presented to it: firstly, whether or not the Crown was responsible for what the claimants allege it did or failed to do; secondly whether or not this action or omission was prejudicial to the claimants; and thirdly whether or not it was in breach of the Treaty. Oliver notes that in practice the last two questions are always answered as one – if the action or inaction was prejudicial, then it was in breach of the Treaty.[27]

Other writers have noted the use of the Treaty as an umbrella for various ideas of justice. Andrew Sharp, for example, in his book *Justice and the Maori* (1991), describes the way in which the Tribunal's jurisprudence weds two fundamentally different types of justice that the Tribunal attempts to address: reparatory justice, in which claimants are to be compensated for past wrongs; and distributive justice, or 'social equity' issues.[28] Paul McHugh has argued that the identification of Treaty breaches in the Ngai Tahu Report bears too strong a resemblance to the modern legal concept of contractual unconscionability to be coincidental.[29] Many writers have made the connection between the way Treaty principles are used and a legalistic approach to the assessment of past events.[30]

The Tribunal and the shaping of stories

The Waitangi Tribunal's processes and politics lead to particular kinds of narrative about Crown-Māori history. The incentive structure in place means that claimants

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[26] Andrew Sharp, "Recent Juridicial and Constitutional Histories of Maori," in *Histories, Power and Loss: Uses of the Past - a New Zealand Commentary*, ed. Andrew Sharp and Paul McHugh (Wellington: Bridget Williams Books, 2001), 45.
[27] W.H. Oliver, "The Future Behind Us: The Waitangi Tribunal's Retrospective Utopia," in *Histories, Power and Loss: Uses of the Past - a New Zealand Commentary*, ed. Andrew Sharp and Paul McHugh (Wellington: Bridget Williams Books, 2001), 11.
[28] Sharp, *Justice and the Maori*, 34.
[29] Paul McHugh, "Law, History and the Treaty of Waitangi," *The New Zealand Journal of History* 31, no. 1 (1997): 54.
[30] For example Giselle Byrnes, *The Waitangi Tribunal and New Zealand History* (Melbourne: Oxford University Press, 2004), 63-101; Oliver, 'The Future Behind Us," 21-3; McHugh, "Law, History and the Treaty of Waitangi," 53; Sharp, "Recent Juridicial and Constitutional Histories of Maori;" Michael Belgrave, "The Tribunal and the Past: Taking a Roundabout Path to a New History," in *Waitangi Revisited: Perspectives on the Treaty of Waitangi*, ed. Michael Belgrave, Merata Kawharu, and David V. Williams (Melbourne: Oxford University Press, 2005).

benefit from a narrative in which the Crown is powerful and has systematically set out to deprive Maori of their resources by trickery and force. The Crown benefits from a version in which most of the damage to Maori interests was done by non-Crown agents, or by Crown agents acting with good intentions and in good faith, and entering agreements with Māori who were willing and informed. The pressure to conform to the shapes of these stories has a marked effect on the documents prepared for a Tribunal inquiry, from the lawyers' submissions on behalf of claimant groups or the Crown, on the individual submissions given by witnesses, and on the historical reports prepared by paid researchers. The Tribunal, although technically a commission of inquiry, has developed into an adversarial forum, with lengthy cross-examination of lawyers, researchers and witnesses, with the exception of tribal elders, whom it would be disrespectful to barrage with questions.[31] In the confines of the hearings, the Crown and Māori participants are pitted against each other in a fight to have their version of history accepted by the Tribunal.

The stories produced by all parties in the Tribunal process are significantly shaped by the structure of inquiries. The main players in the debate are already marked as Crown or claimants, and they are already marked in opposition. The claimants are bringing a case against the Crown; the Crown is defending itself against the claimants. It is important to note, however, that there are individuals on both sides who are concerned with maintaining relationships when the claim has been settled, which curbs antagonism in the hearings to some extent.

Another important aspect of the Tribunal process is that the broad moot is set from the beginning - the claimants must argue that Crown actions and/or inactions after 1840 have prejudicially affected them in a way that breaches the principles of the Treaty of Waitangi. The claimants do well if they can show that the misfortunes in their history were entirely due to Crown action (or inaction), thus the Crown is cast as a powerful and malevolent force. Historian Michael Belgrave has described this characterisation, as it appears in the Tribunal's finished reports, as:

> ...the Tribunal's Frankenstein-like re-creation of the Crown. The Crown is a ubiquitous, ever active, and sexually ambiguous (at some times male, at others female) historical figure. In the Treaty literature, the Crown is able to metamorphose into a surveyor in the 1860s, a minister of Māori affairs in the 1980s, the governor in the 1860s, and a clerk in the colonial

[31] Boast, "Waitangi Tribunal Procedure," 57.

> office in the 1840s. The Crown has become all-seeing, all-knowing and, most importantly, all-responsible.[32]

Some historians dispute this, arguing that the Tribunal, in recent years especially, has been concerned to present a rounded view of Crown agents, and pays attention to the social context in which they lived.[33] There is no doubt, however, that the claimants and their lawyers describe something of a 'Frankencrown' in their submissions.

The dichotomy of Crown and Māori causes some difficulties with such figures as Māori who worked for (or closely with) the Crown, and the Pākehā ancestors of claimants. An issue which apparently caused some consternation among claimants in the lead-up to the National Park inquiry was the role of the Grace brothers, sons of the local missionary, three of whom were Crown agents in the late 19th century. Two of the brothers married high-born Tūwharetoa women, and have many descendants among the Tūwharetoa claimants. Another example from the National Park inquiry is the group of tangata whenua employed by the Department of Conservation, some of whom have key roles in the liaison process. These roles were subject to very little examination in the inquiry.

There has been some argument as to whether or not the Tribunal reports cast Māori as victims at the same time as they make a monster of the Crown. Byrnes identifies a "paradox of agency" whereby the Tribunal, seeks to reclaim the agency of Māori actors in New Zealand history (traditionally left out of the story or cast as helpless), yet is constrained by the Treaty claims procedure which requires Māori to be victims of Crown action in order to receive compensation.[34] Responding to Byrnes, Jim McAloon has argued that the Tribunal's characterization of events is historically accurate and not contradictory in the way Byrnes describes.[35] Byrnes is making the point, however, that Māori victimisation is necessarily stressed by the Tribunal, rather than that Māori were not victims. Recent works by Richard Boast and Michael Belgrave illustrate this difference by showing that many Māori made decisions to sell land, or sign the Treaty,

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[32] Belgrave, "The Tribunal and the Past: Taking a Roundabout Path to a New History," 37.
[33] For example Jim McAloon, "By Which Standards? History and the Waitangi Tribunal," *The New Zealand Journal of History* 40, no. 2 (2006).
[34] Byrnes, *The Waitangi Tribunal and New Zealand History*, 109-12.
[35] McAloon, "By Which Standards? History and the Waitangi Tribunal," 206.

after carefully considered thought, and without being forced into such decisions by Crown agents.[36] Such stories do not appear in Tribunal reports or claimant submissions.

Another effect of the Tribunal's mandate and process on its historical narratives is that actors and forces other than the Crown and Māori are rendered irrelevant. Belgrave notes that other key causes of Māori marginalisation and land loss such as "nineteenth century capitalism, the poor judgement of citizens, or Pākehā racism" cannot be held responsible in the Tribunal setting, because, under the current system, the Tribunal's account of their actions would fail to provide a case for recompense.[37] This leaves a rather shrunken set of accounts: the actions of Pākehā and other settlers have no role save as a rogue force that the Crown has responsibility to restrain or foster, depending on their impact on Māori. Economic, pathological, and meteorological events must be either the Crown's responsibility or be irrelevant in the narratives produced by the Tribunal process.

A related feature of the Tribunal process is its focus on the intent of Crown agents. It is not clear why this is, as a Crown action or inaction breaching the Treaty and causing prejudice to Māori could in theory have been done (or not done) without malicious intent. The definition of Treaty principles focusing on 'good faith' angles debates in this direction, however. As I will argue in the following chapters, in the case of the National Park inquiry this has led to an underemphasis on the role of institutional factors in Māori marginalisation, which are an important aspect of the history of relationships in the park.

To summarise, the Tribunal process encourages submissions from the claimants and their lawyers and researchers, which emphasise features of the Crown's power, malice and trickery. Crown witnesses, lawyers and researchers, on the other hand, have incentives to produce a version of history in which the Crown is well-intentioned and honest in its dealings, and that its actions and omissions were largely unavoidable due to the circumstances of the times. The process encourages those on both sides to battle over these conflicting versions in order to convince a neutral party, the Tribunal, that their version is the true story. This is not always how the parties operate in the Tribunal process, but they are certainly encouraged by the Tribunal process to perform in that

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[36] Michael Belgrave, *Historical Frictions: Maori Claims and Reinvented Histories* (Auckland: University of Auckland Press, 2005). Richard Boast, *Buying the Land, Selling the Land: Governments and Maori Land in the North Island 1865-1921* (Wellington: Victoria University Press, 2008).
[37] Belgrave, "The Tribunal and the Past: Taking a Roundabout Path to a New History," 37.

way. This contrived scenario of conflict is exacerbated by the material importance, to all parties, of the Tribunal's recommendations.

Pressure and Politics

For the players in a Tribunal inquiry, the historical report is a tool to take into the settlement process. For the claimants the stakes are very high – and everyone, from the witnesses to the researchers, to the lawyers and to the Tribunal members, is put under pressure. Tipene O'Regan, the key negotiator in one of the biggest claims settled in New Zealand, the Ngai Tahu claim, has argued that:

> In the context of Treaty issues, the floor of the High Court and that of the Waitangi Tribunal become a battle ground of the most fundamental cultural conflicts. They are not so much conflicts about facts and issues, as conflicts of mindset. In that environment, history and culture cease to be recreational or scholarly pursuits. The stakes are too high. The evidence of the conventional historian, the requirements of 'due process' and the whakapapa of the Maori, are presented for one purpose, that of a substantial result, achieved or denied, in terms of money, resources or property. I leave justice to one side.[38]

O'Regan emphasises that the search for justice, and the search for truth, in Tribunal inquiries, are being conducted under the immense political pressure that tends to accompany large sums of money and valuable tracts of land. Submissions are often highly coordinated: the submissions of Crown witnesses are viewed by the Crown Law Office before submission, and claimant lawyers usually delegate thematic issues between themselves to increase efficiency.[39] The submissions of Ngāti Tūwharetoa to the Tribunal for the National Park inquiry show signs of extensive co-operation between individuals and hapū, with some individuals delegated by the Paramount Chief to speak on certain matters, and much cross-referencing between hapū closing submissions. This kind of co-ordination is to be expected, and has the advantage of unity of argument, but indicates the presence of a party line, and the possibility of the pressure to toe that line. Alan Ward, a prominent New Zealand historian who has worked extensively with the Waitangi Tribunal, gave an example of an elder who gave evidence which did not adhere to the wider party line, causing great ire to the claim leader.[40]

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[38] Tipene O'Regan, "Old Myths and New Politics. Some Contemporary Uses of Traditional History," *New Zealand Journal of History* 26, no. 1 (1992): 11.
[39] Boast, "Waitangi Tribunal Procedure," 60.
[40] Alan Ward, "Historical Method and Waitangi Tribunal Claims," in *The Certainty of Doubt: Tributes to Peter Munz*, ed. Miles Fairburn and Bill Oliver (Wellington: Victoria University Press, 1996), 146.

Nor are researchers immune from the pressure to tally their findings to the argument of one side or another. Several commentators have noted the tendency for research reports to be skewed in the direction of their funding source.[41] Richard Boast, who has played the roles of both counsel and historian in the Tribunal process, has noted that in his experience historians are usually advocates to some degree.

> …a historian briefed by the Crown to prepare a report … for the purpose of Waitangi Tribunal proceedings … has been retained by the Crown and thus there is an in-built stance that on the whole the evidence will be selected and read to put a favourable gloss on the Crown's actions (in the same way that claimant historians will want to put an unfavourable gloss on it).[42]

The particularly 'glossy' parts of the National Park inquiry reports were the arguments surrounding the 'gift,' and those surrounding Crown motivations for establishing the national park.

National parks in Waitangi Tribunal inquiries

According to Nicola Wheen and Jacinta Ruru, (academics who have written on environmental law and Māori rights), environmental management issues are the most common recurring theme in Tribunal reports. They cite Mason Durie's argument that this is understandable, given that the different cultural perspectives on the environment have been an important contributing factor to the distrust between Māori and the government.[43] In the context of Tribunal inquiries, the 'prejudicial effect' most commonly claimed in relation to environmental issues is "the depletion of spiritual and material resources."[44]

Geoff Park has argued that "of all the themes concerning Crown actions with respect to the indigenous flora and fauna in the 1912 to 1983 period, the theme of national parks has been the least disputatious."[45] He speculates that this is because New Zealand national parks were mainly established in mountainous environments that, although in

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[41] Michael Belgrave, "Something Borrowed, Something New: History and the Waitangi Tribunal," in *Going Public: The Changing Face of New Zealand History*, ed. Bronwyn Dalley and Jock Phillips (Auckland: Auckland University Press, 2001), 103; Richard P. Boast, "Lawyers, Historians, Ethics and the Judicial Process," *Victoria University of Wellington Law Review* 28(1998): 108-9; O'Regan, "Old Myths and New Politics. Some Contemporary Uses of Traditional History," 11.
[42] Boast, "Lawyers, Historians, Ethics and the Judicial Process," 108-9.
[43] Nicola R. Wheen and Jacinta Ruru, "The Environmental Reports," in *The Waitangi Tribunal: Te Roopu Whakamana I Te Tiriti O Waitangi*, ed. Janine Hayward and Nicola R. Wheen (Wellington: Bridget Williams Books, 2004), 96. The quote they use is from Mason Durie, *Te Mana, Te Kawanatanga: The Politics of Maori Self-Determination* (Auckland: Oxford University Press, 1998), 24.
[44] Wheen and Ruru, "The Environmental Reports," 102.
[45] Park, *Effective Exclusion?*, 384.

use by Māori, were not heavily settled or the most productive areas for food gathering.[46] Park also points out that there were two major exceptions to this rule: in the Ureweras, in the north-eastern North Island; and the Whanganui region, where land that was important for everyday Māori life in the area, was taken in large amounts for scenery preservation. These reserves were subsequently made into national parks in both cases. Park argues that, among the places in New Zealand where scenery protection is a major land use, "…it is in the Whanganui River country that the Crown's [establishment of reserves] has had the greatest impact on Maori."[47]

This concern may also go some way towards explaining why, as Park notes, national parks have been less controversial than other environmental issues, as, for the latter part of their history at least, national parks have been designed to prevent or arrest the degradation of the environment. The more painful issue for claimants with respect to national parks and scenic reserves is that they entailed the removal of large amounts of the environment from Māori control and use. The lawyer for Ngāti Tūwharetoa in the National Park inquiry suggests in the iwi's closing submissions that "[p]erhaps it does not matter much what motivated the Crown to seek to acquire the mountains. From where tangata whenua are sitting, what matters is that the Crown took them."[48] Despite this there was much focus in the National Park inquiry reports and submissions on the Crown's motivations for establishing a national park.

The submissions.

The bulk of the academic literature on the Tribunal focuses on the its published reports, and, to a lesser extent, the reports written as evidence to the inquiries by professional historians. The individual submissions written by Crown and claimant witnesses, and the group submissions written by their counsel, are seldom analysed by academics.[49] This is both unfortunate and surprising, given that much of the debate about the research reports (and, to a lesser degree, the final reports) is about how much they are shaped by the political motivations of claimant or Crown parties. The submissions contain a great deal of information regarding the political motivations of claimant and Crown actors. In particular, the group submissions can be seen as the political positions that supposedly

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[46] Ibid., 384.
[47] Ibid., 308
[48] Closing Submissions of Ngati Tuwharetoa, #3.3.43, paragraph 7.23, 108.
[49] Judith Binney has also observed this. Judith Binney, "History and Memory – the Wood of the Whau Tree, 1766–2005," in *The New Oxford History of New Zealand*, ed. Giselle Byrnes (Oxford: Oxford University Press, 2009), 83.

influence the historical reports. They are the carefully considered written forms of the advocates' arguments.

The Tribunal, researchers, claimants, lawyers and Crown witnesses in a Tribunal inquiry are all under particular kinds of pressure in the production of their reports and statements. The Tribunal reports, as many writers have shown, are strongly shaped by the Tribunal's guiding legislation and purpose. The reports are also a product of the evidence presented to the Tribunal in the course of a hearing, and the arguments made by Crown and claimant counsel. The literature on the subject has also shown that research reports are affected by the political goals of the party by whom they were commissioned. Researchers are also influenced by the Tribunal process in ways as obvious as the time restrictions they are under and the particular questions they are required to answer. Some researchers voice their own opinion as to whether principles of the Treaty have been breached, and if so which particular principles they are, while other researchers consider this a step too far into advocacy.[50]

The influences upon lawyers and witnesses have not received the same amount of scrutiny from academics as the Tribunal members and researchers. There are exceptions: Richard Boast, himself a lawyer who has often acted for claimant groups, has written about the role of lawyers. Tipene O'Regan, who led the negotiations for the Ngai Tahu claim, has written about the pressures and perverse incentives upon claimant groups, though neither Boast nor O'Regan focus on the production of submissions. The group submissions are clearly influenced by the principles-based method of judging Treaty breaches. Almost all the claimant closing submissions to the National Park inquiry, which are written by lawyers, provided an explicit list of the Treaty principles they believed to be relevant, and the ways in which they believed those principles to be breached. It can be clearly seen that the submissions cater to the Tribunal's prescribed system of judging Treaty breaches, and offer their own Treaty principle-focused analysis of the evidence in the hope that the Tribunal will find their arguments convincing. The lawyers are also, by the very nature of their profession, influenced by the demands of their clients.

Crown lawyers have a more ambivalent role in the Tribunal process. The government has ultimate interest, after all, in relieving historical grievance, albeit as cheaply as possible, and it is not in their interests to antagonise claimants by strongly denying their

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[50] Ibid.

claims. Neither, however, is allowing any and every claimant accusation to go unchallenged. The ideal position is a careful acknowledgement of some wrongs; and a careful denial of others. The Crown submissions to the National Park inquiry addressed only some of the accusations of breaches made by claimant counsel. A short exposition in the Crown closing submissions on 'the role of the Crown' argued that this was because they aimed to play an 'assisting' role, helping the Tribunal by providing evidence where it saw gaps, rather than a role as a defendant.[51]

As for the claimants, O'Regan makes it clear that he thinks the settlement outcome is always an important consideration when presenting evidence to the Tribunal, for the claimants as for any actor in the Tribunal process. Judith Binney has argued that the oral evidence given by claimants is "testimonial" in form, in that the claimants seek restorative justice. She goes on to argue that these 'presentist' tendencies are checked and balanced by the written evidence provided to the Tribunal.[52]

An important question is how much individual submissions have been vetted and shaped by lawyers and the influential members of claimant and Crown groups. There is certainly evidence of group co-ordination in the claimant submissions to the National Park inquiry. Individual claimants cited other claimants in their evidence, and it is clear that in some instances people were asked to cover certain issues by tribal leaders.[53] On the Crown side it is also clear that witnesses were given advice by lawyers.[54] During the Crown hearings both Crown witnesses were reluctant to answer some questions, especially about future settlement options. One would expect some level of co-ordination within groups, of course, and one would also expect a competent lawyer at least to read submissions and offer advice on the implications of particular statements and arguments. Unfortunately I was not privy to these processes, and am unable to shed much light on the level of influence lawyers and claim leaders had over the individual submissions to the National Park inquiry. The experience of reading the individual claimant submissions convinced me that they are primarily the work of separate people. Individual voices came through strongly, and the submissions often read like memoirs, chronicling tales of personal loss, sometimes sadly, sometimes angrily. Very few make

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[51] Closing submissions of the Crown, "Chapter One: Introduction," Wai 1130, June 20, 2007, paragraphs 33-4, 12.
[52] Binney, "History and Memory – the Wood of the Whau Tree," 83.
[53] For example Stephen Asher stated in his evidence that the Ariki, Tumu Te Heuheu, had asked him to speak about the block of land called Rangipō North 8. Evidence of Stephen Asher regarding Rangipo North No 8, Wai 1130, #G39, October 2, 2006, paragraph 1, 1.
[54] Interview with Tongariro-Taupō Conservator, July 22, 2008.

explicit demands, and do not seem like the work of political strategists. The two Crown witnesses made more dispassionate submissions, but also read like individual works.

The use of these documents as data has benefits and difficulties. The submissions are a rich source of information and opinion on the relationship between Māori and government agencies, both contemporary and historical. They are also highly political, and presented, as Tipene O'Regan put it, to achieve or deny 'a substantial result.'[55] Anthropologists Paul Antze and Michael Lambek describe the performative nature of memories presented in order to achieve a result:

> Memories are acts of commemoration, of testimony, of confession, of accusation. Memories do not merely describe the speaker's relation to the past but place her quite specifically in reference to it. As assertions and performances, they carry moral entailments of various sorts.[56]

There has been a recent profusion of writing about 'memory,' or the processes by which people make sense of the past. The relationship between memory and academic history has been a focus of this literature. Pierre Nora, one of the key figures in this field, describes the difference between memory and history like this:

> Memory is life, borne by living societies founded in its name. It remains in permanent evolution, open to the dialectic of remembering and forgetting, unconscious of its successive deformations, vulnerable to manipulation and appropriation, susceptible to being long dormant and revived. History, on the other hand, is the reconstruction, always problematic and incomplete, of what is no longer.[57]

The relationship between what happened, or the rigorous attempt to reconstruct an account of those events, and the more dynamic, social process of 'remembering' the past, is a complicated equation. Some argue that academic history is just one of many influences on collective story-making. Greg Dening, acknowledging that there is no word in English which encompasses the many different ways of knowing the past, suggested they might all be called *history*.[58]

Nora also writes of "*lieux de mémoire*" or "sites of memory" where the transmission of stories about the past takes place. Examples of these are "[m]useums, archives, cemeteries, festivals, anniversaries, treaties, depositions, monuments, sanctuaries, [and]

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[55] O'Regan, "Old Myths and New Politics," 11.
[56] Paul Antze and Michael Lambeck (eds) *Tense Past: Cultural Essays in Trauma and Memory* (New York: Routledge, 1996), xxv.
[57] Pierre Nora, "Between Memory and History: Les Lieux De Mémoire," *Representations* 26, no. Special Issue: Memory and Counter-Memory (1989), 8.
[58] Greg Dening, *Performances* (Melbourne: Melbourne University Press, 1996), 36.

fraternal orders."[59] Nora argues that not only are the stories of the past produced at such sites, but our identities rest upon them as well.[60] Peter Novick has elaborated on this point, explaining that

> …there is a circular relationship between collective identity and collective memory. We choose to center certain memories because they seem to us to express what is central to our collective identity. These memories, once brought to the fore, reinforce that form of identity.[61]

Henry Rousso, a French historian, wrote a groundbreaking book called *The Vichy Syndrome* (1991), an account of the way the Vichy regime's involvement with the Nazis had been communicated and understood in France over time. He describes the changing levels of attention paid to the history of the Vichy regime, noting a series of "crisis situations in which the presence of the past cannot be denied."[62]

A Waitangi Tribunal inquiry can be seen as one such 'crisis situation.' It can also be seen as a very particular 'site of memory' in which official, organisational, cultural and scholarly versions of history are juggled and jousted over. Gillian Whitlock has written about the implications of the government's child removal policies in Canada and Australia becoming a site of memory. The recentness of the events being remembered, and the political context in which the events are being recalled, Whitlock argues, calls our attention to:

> …the connections between memory and identity politics, and the ways in which acts of memory in the present construct changing relationships to the past. Here acts of remembering take on performative meaning within a charged field of contested moral and political claims.[63]

The atmosphere in and around a Tribunal inquiry is well described as 'a charged field of contested moral and political claims.' This chapter has shown some of the ways it is 'charged,' and broadly how the documents and submissions produced in inquiries are subject to those moral, political and institutional forces. The points made in this section will be returned to in the following chapters discussing both the history of Tongariro, and how this history has been portrayed in the inquiry. The next section of this chapter examines how the claim has affected the practice of relationships.

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[59] Nora, "Between Memory and History: Les Lieux De Mémoire," 12.
[60] Ibid.
[61] Peter Novick, *The Holocaust and Collective Memory* (London: Bloomsbury Publishing, 1999), 7.
[62] Henry Rousso, *The Vichy Syndrome* (Cambridge, Massachusetts: Harvard University Press, 1991), 219.
[63] G Whitlock, "Active Remembrance: Testimony, Memoir, and the Work of Reconciliation," in *Rethinking Settler Colonialism*, ed. Annie E. Coombes (Manchester: Manchester University Press, 2006), 27.

How does the claim affect relationships?

The chapter so far has discussed the internal workings of the claims process and its effects on the statements made to it in evidence. The claim is also playing an active role, however, in influencing the practice of relationships in the park. Many consultation processes were disrupted, and in some cases stopped, while the claim was in progress. In some cases personal relationships between DOC staff and Māori became fraught as controversial issues were raised and debated. Most relationships, however, continued to function, in a disrupted form, despite the disagreements expressed in the inquiry. Many people noted the opportunities for the relationship and for management that a Treaty settlement may offer, such as better structures and directions for involvement, and funding in the form of redress for Māori which will better enable them to participate.

During the National Park inquiry, and for some time afterwards, formal consultation processes between DOC and iwi and hapū groups slowed or ground to a halt. One of the best-established and regular of the DOC-Māori connections – the liaison committee between DOC management and the Tūwharetoa Maori Trust Board – met only once in 2006.[64] This was a target for criticism during the claim. Tūwharetoa contended that "[f]ailure to have regular meetings is … symptomatic of a far from healthy relationship."[65] It could also be the sign of a temporarily disrupted relationship, however, as one interviewee from DOC suggested:

> "…every time the liaison committee hasn't met, it's been because Tūwharetoa have decided not to meet. Sometimes it's in protest, sometimes it's just, they're busy, their attention is elsewhere."[66]

Early in 2007 I was told that "at the moment it's really hard to get meetings, no-one wants to talk," and that the joint committee to run the fishery had been a boon in this respect because it meant people had to come together. [67]

Several of the Māori members of the Conservation Board attended few or no meetings during 2007.[68] Observers tended to think this was because they were busy: "[l]ately other Māori members haven't been attending because of the claim issues,"[69] and that this was common when members were busy with tribal issues in general: "when there's

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[64] Closing Submissions of Ngati Tuwharetoa, #3.3.43, paragraph 8.105, 197.
[65] Ibid.
[66] Interview with Tongariro-Taupō Conservator, July 22, 2008.
[67] DOC Manager 2, in interview with Tongariro-Taupō Conservator and DOC Manager 2.
[68] Minutes of the Tongariro/Taupō Conservation Board, 16.2.07, 13.4.07, 15.6.07, 19.10.07, 07.12.07, available online at http://www.doc.govt.nz/templates/page.aspx?id=38898.
[69] Interview with Conservation Board Member 4, March 30, 2007.

something going on sometimes you won't see a Māori face."[70] There was also indication that this was to do with a general trend at the time towards high level negotiations, exemplified by the major settlement deal signed between Central North Island iwi, including Tūwharetoa, and the Crown in 2008.[71] Project-based initiatives also encountered difficulties: a Tongariro Forest Management group could get iwi attendance at only two out of six meetings, and the Karioi Rāhui partnership project with Ngāti Rangi, often held up by DOC as a best practice example of working with iwi, was described as being in "a stuttery phase" in 2007, though my interviewee blamed this on the death of one board member and the departure of another.[72]

Another possible feature of the interruption in relationships is the fact that within the adversarial structure of Waitangi Tribunal inquiries, it does claimant groups no service to be seen as having a well-functioning relationship with a government department. Carrying on with the status quo could potentially be interpreted as a tacit acceptance of the status quo, so it is in the claimants' interests to pull back from interaction. The use of the lack of meetings as an attack on DOC in the claim is an indication that this possibility was not lost on the Tūwharetoa claimants.

Some of these disruptions continued when the hearings ended. This may have been partly due to the ongoing effect of the debates that took place during the hearings. It is also an indication of the uncertainty in the relationship that will persist until after settlement. In July 2008 the process of consulting on new concession applications had stalled because Māori were finding it difficult to approve new concessions while settlement was pending:

> At the moment we're hearing all the time from iwi that they are not wanting to give endorsement for concession applications, same issue with resource consents. I can say it because they say it to us all the time, they're finding it difficult to endorse, when their aspirations in that the park will be returned to them as owners, they don't want to be encumbered by concessions and decisions made when they weren't in that owner role.[73]

In some cases personal relationships between DOC staff and Māori were affected by the claim. Emotions occasionally ran high while these major issues of past and continuing injustice were being discussed and DOC staff came under some attack. One of my

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[70] Interview with Conservation Board Member 5, May 3, 2007.
[71] Interview with Tongariro-Taupō Conservator, July 22, 2008; Deed of Settlement of the Historical Claims of CNI (Central North Island) Forests Iwi Collective to the Central North Island Forests Lands, June 25, 2008.
[72] Interview with DOC Manager 5.
[73] Interview with Tongariro-Taupō Conservator, July 22, 2008.

interviewees said the Conservator "took bullets from everywhere" during the hearings.[74] The best example of this was a debate over part of the Conservator's submission in which he said Hepi Te Heuheu had advocated the practice of heli-skiing on the mountains in the 1970s. During the hearings the lawyer for Ngāti Tūwharetoa said that:

> [m]y instructions are that Tuwharetoa are very upset that the mana of Sir Hepi has been belittled by suggesting that he would support heli-skiing within the peaks and that that is not consistent with the Tikanga that pertains to these mountains.[75]

The example shows the potential for damage to the relationship between DOC staff and Māori that the inquiry process can have. Paul Green withdrew the controversial sentences in his submission, saying he thought it was the best thing to do in the circumstances, which indicates a desire on his part to maintain relationships through the process. In an interview he spoke of being very cautious about what he said in the claim in order not to cause offence.[76]

Though there were disruptions, in general the personal relationships between DOC staff and Māori continued. The Conservator said he was still asked to come to tangi, and interrupted during meetings by Tūwharetoa leaders who wanted to introduce him to people.[77] The community liaison manager at Tongariro travelled to Australia with a member of Tūwharetoa and to Canada with two members of Ngāti Rangi as part of a research project on co-management in 2007. It seems that the longer-standing, closer relationships were less affected by the claim.

> (KM)… *is there a difference there between people who are more involved in park management and people who are less involved?*
>
> (PG) Yes, people who are less involved, they haven't been on the trust board or been key contacts, are probably impacted by the process more, in terms of relationships. They don't see what's going on, the day-to-day stuff. And it's the same with us, the staff who are less involved get more upset at some of the things they see in evidence, than I do, because I understand the process.[78]

There were some cases in the claim where Māori who work for DOC gave evidence against DOC in hearings. In one case this situation bothered the claimant considerably. Although that claimant felt the difficulty of wearing two hats at once, it did not cause

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[74] DOC Manager 2, in interview with Tongariro-Taupō Conservator and DOC Manager 2.
[75] Draft Transcript of National Park Hearing 8, #4.1.12, 468.
[76] Tongariro-Taupō Conservator, in interview with Tongariro-Taupō Conservator and DOC Manager 2.
[77] Interview with Tongariro-Taupō Conservator, March 4, 2008.
[78] Interview with Tongariro-Taupō Conservator, July 22, 2008.

significant problems in the relationship.[79] There were individual differences in response to the strategies employed during claims:

> I think everyone realises that in the claim, legal cases must be made, but the relationship goes on. And people deal with that differently, some find it difficult, some don't. Sometimes it's to do with the issues, sometimes the individuals involved.[80]

Among DOC staff and Māori who interact closely, the concerns raised in the claim were in the main part already understood. There is a substantial section of the wider Māori community, however, which distrusts DOC, and has done from long before the claim. Some of this distrust is general to government departments, but it also arises from specific issues around land ownership and land use restriction. It is possible that the animosity stirred up by the claim will further damage these relationships. On the other hand the settlement process will probably help to ease longstanding resentment:

> KM: *Could it be damaging for your wider profile, potentially among the next generation of Māori?*
>
> PG: I never really thought of that. Maybe, but I think the outcome will be the major thing. The leadership will be positive with the model, whatever model is the outcome there's bound to be a higher level of engagement. I think people will move fairly easily from the claim through the negotiation, through to implementation. Styles will change.[81]

At this point it is impossible to judge the outcomes of the Tribunal inquiry, or of the settlement negotiations that will follow it. Whatever the outcome in terms of ownership, structure and management of the national park, however, it is fairly certain that Māori groups will be in a better position to deal with it.

Conclusion

The claims process has a strong effect on the way the Crown-Māori relationship is characterised in inquiries. The format of inquiries and the pressure put on participants to conform to the strategies best suited to the success of their claim, or the defence against it, creates caricatured descriptions of the relationship. The parties are to a large extent forced into corners against each other. This has caused difficulties in the ongoing relationship, with much less interaction occurring than usual, and some tensions. Those parties more closely involved in the relationship take a longer term perspective on these disruptions, and see them as a phase which will end when settlement is made. There

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[79] Interview with Māori staff member of DOC, March 2, 2007; Interview with Tongariro-Taupō Conservator and DOC Manager 2.
[80] Interview with Tongariro-Taupō Conservator, July 22, 2008.
[81] Ibid.

may be some damage to relationships, but this will probably be outweighed by the benefits of a settlement deal.

The next four chapters begin with a period of the park's history: its beginning; its evolution; the big changes in administration and Māori involvement from the 1970s; and the period of the National Park inquiry. All four chapters finish with an analysis of the way the Crown-Māori relationship in that period was characterised by the Crown and claimant parties in the National Park inquiry, and many of the issues raised in the first part of this chapter will be returned to in those discussions.

Chapter Five: Beginnings 1887-1907

The district surrounding the national park is sometimes called the Volcanic Plateau, which conveys some of its grandeur and inhospitality. The story of Ngātoroirangi, the first Tūwharetoa ancestor to claim the lands and name the mountains, is even more evocative. There are multiple versions of the story, in which Ngatoroirangi, a *tohunga* (priest/magician/spiritual leader), climbed Tongariro in order to survey and lay claim to the area. The stories of his ascent vary as to whether he was alone or with a party of followers, with a companion or a slave. All stories tell of Ngatoroirangi being struck with the cold as he climbed the mountain, and calling to his sisters in Hawaiki[1] for fire to save him.[2] The words he called: *"Kuiwai e, Haungaroa e, homai he ahi, kei riro au i te Tonga"* (Kuiwai, Haungaroa, send me fire or I shall be seized by the South Wind), are the origin of the name Tongariro ('Tonga' means South Wind; 'riro' means to seize). His sisters sent two spirit-creatures carrying baskets of embers to Ngatoroirangi, but in their hurry to get to him, the creatures spilt most of the embers along the way, creating the volcanic activity from Wharekauri (White Island), through Rotorua and Taupō, to the place where Ngatoroirangi had stopped on the mountain. When the creatures arrived, only *he kete tahi* (one basket) of embers was left. This sprang forth as the Ketetahi Springs. Ngatoroirangi was warmed, and able to continue to the top of Tongariro to claim the mountain and surrounding lands as home for his descendants.

The names of Ruapehu and Ngauruhoe also derive from this story. Ngauruhoe (or Auruhoe) is usually said to be the name of the slave or companion with Ngatoroirangi on the climb. Sometimes Ngauruhoe is said to have died of the cold, and his, or her, body thrown by Ngatoroirangi into the crater of the volcano for burial – or alternatively that she or he was killed by Ngatoroirangi and thrown into the crater as a sacrifice to the gods.[3] Another story has it that Ngatoroirangi was angered by the fact so many baskets of embers had spilled on the way, and thrust his paddle into the ground, where its handle vibrated with the force of the action: *ngauru* is to vibrate, *hoe* is a paddle, and

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[1] Hawaiki is the name for the ancestral home country, from which the canoes departed for Aotearoa. Similar migration stories exist in other Polynesian countries.
[2] In some stories Kuiwai and Haungaroa are in Aotearoa.
[3] John Te Hurinui Grace tells the sacrifice story. John Te H. Grace, *Tuwharetoa: A History of the Maori People of the Taupo District* (Auckland: Reed Books, 1959, reprinted 2005), 64.

Ngauruhoe means the vibrating paddle.[4] He also stamped his foot so hard it made a crater in the ground. *Rua* is the word for hole or crater, and *pehu* the word for stamp, so Ruapehu is the stamped crater. Pehu also means a loud noise or explosion, and sometimes the meaning of Ruapehu is given as simply a description of its frequent volcanic activity. The nineteenth century references to the mountains often use the name Tongariro to cover both Tongariro and Ngauruhoe, and sometimes for all three mountains.

The Whanganui tribes to the south and west of Ruapehu have alternate names for the mountains, though Ruapehu, Ngauruhoe and Tongariro are still the most commonly used. Ruapehu is sometimes Matua Te Mana, named because Ranginui, the sky father, placed the mountain in the centre of Te Ika a Mauī (the Fish of Mauī, the name of the North Island) as something of great mana to bring peace to the threshing fish. Matua Te Mana was lonely in the centre of the island by himself, and Ranginui took pity on him and sent him some companions.

The two tribes share the story of the separation of the mountains. In the beginning there were six mountain companions all clustered together: Matua Te Mana, Matua Te Pono (Ngauruhoe), Matua Te Toa (Tongariro), Matua Te Tapu, (Taranaki), Tauhara, and Pūtauaki. These last four mountains all loved the female mountain, Pīhanga, a perfectly curved hill to the south of present-day Tūrangi. They fought over her, and Tongariro/Matua te Toa won. The other three mountains went their separate ways, and when the sun came up the following morning they froze into place. Pūtauaki and Tauhara travelled northeast to the Bay of Plenty and Taupō, respectively. Taranaki went west, carving the Whanganui River as he went.

The Whanganui tribes are linked to the Whanganui River, which winds north down from Tongariro, west through Taumarunui, then south down to Whanganui, a small city on the southwest coast of the North Island, in the curve of the "great harbour" for which the river is named.[5] The upper river groups have kinship ties to Tūwharetoa, though the relationship has ranged from friendly to hostile at different points in time.[6]

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[4] *Ka ngauru te puritanga o te hoe o Ngatoroirangi. The handle of the paddle of Ngatoroirangi vibrated.* Interview with member of Tūwharetoa, August 21, 2009.

[5] 'Whanga' means harbour, and 'nui' is the word for large or great. Until 2009 the official written name of the city was 'Wanganui.'

[6] David Young, *Woven by Water: Histories from the Whanganui River* (Wellington: Huia Publishers, 1998), 16.

Early contact in the Tongariro area

The area covered by the National Park inquiry has a complicated territorial history. The claim itself was separated from two larger district inquiries, the Central North Island and Whanganui Lands inquiries, because of the amount of overlap between them. Angela Ballara, a historian and anthropologist who contributed research to the inquiry, described some of the complexity in a preliminary report:

> The National Park Overlap Sub-district is … by definition, an area more than most marked by overlapping iwi and hapü claims. The nature of Mäori land use, land settlement, system of tenure and inter-iwi or inter-hapü relations makes this true of most areas in Aotearoa-Te Waipounamu. But this overlap district covers an area where sequential streams of migration and settlement coming inland from the various coasts met and mingled, not once, but continually throughout many generations until interrupted by the Treaty of Waitangi and the onset of colonisation. In some cases, group migration continued beyond that time, sometimes following commercial opportunities or as a result of war, but more often in response to Crown activity, including land purchasing.[7]

Most of the early contact between Māori and Pākehā was in the coastal areas. Traders and missionaries had been in operation in Aotearoa since the turn of the nineteenth century, but by 1840, when the Treaty was being taken around the country for signing and organised British settlement was underway, very few Pākehā had travelled to these mountains. The first recorded Pākehā trip through the upper Whanganui River, and also the first into the Taupō region was a kidnapping in 1831.[8] A few early travellers were drawn by a desire to climb and conquer the mountains. This created conflict with local Māori, for whom the mountains were sacred, and climbing to the top a desecration.[9] Ruapehu, Ngauruhoe and Tongariro, as with many other mountains in Aotearoa, were, and are, seen as ancestors by the Māori who live at their feet. The peaks are the heads of the ancestors, and are therefore especially sacred.

The highest chief of Tūwharetoa at the time of the Treaty was Mananui Te Heuheu Tūkino II (Mananui), whose mana was closely associated with Tongariro. He was adamant that no one should climb the mountain. Edward Jerningham Wakefield, the son

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[7] Angela Ballara, *National Park Overlap Subdistrict Pre-casebook Research Review*, Wai 903 / 951, 2003, 9.

[8] A whaler named Andrew Powers was kidnapped by a party of Tūwharetoa at Whanganui after a fight broke out between a Pākehā arms dealer, Joe Rowe, who was selling human heads, and the visiting Tūwharetoa. Rowe and another man were killed, Powers was kidnapped and taken all the way up the Whanganui river and across to Waitahanui, on the east coast of Lake Taupō.

[9] There appear to have been exceptional circumstances in which ascent to the peaks was appropriate, for example Ngāti Rangi had a practice of burial in the crater lake.

of Edward Gibbon Wakefield, founder of the New Zealand Company[10] and a key figure in the British settlement of New Zealand, travelled to the southern Taupō region in 1842 and asked Mananui for permission to climb Tongariro. Wakefield quotes the chief as replying:

> I would do anything else to show you my love and friendship; but you must not ascend my *tipuna,* or 'ancestor'.[11]

He added that the chief "…constantly identified himself with the mountain and called it his sacred ancestor."[12] Wakefield did not climb, out of respect for the chief's request, although several other travellers before and after him, went ahead despite their knowledge of Māori disapproval, and sometimes under risk of attack.[13]

Mananui Te Heuheu did not sign the Treaty of Waitangi. James Cowan, an early historian, and recipient of a suspiciously large number of good stories, alleges that Te Heuheu refused to enter into a pact with Queen Victoria with the following words:

> I shall not abase myself by placing my head between the thighs of a woman … I am King here in Taupō.[14]

Mananui's younger brother, Iwikau, did sign.[15] Cowan says that Iwikau was chastised by his older brother for this and made to return the red blanket he received in recognition of making his mark.[16] Ballara states that Iwikau would not have had the authority to sign on behalf of Tūwharetoa, or even his hapū, Ngāti Tūrumākina.[17] Mananui continued to assert his independence from Pākehā authority. When Edward Jerningham Wakefield met the Tūwharetoa chief in 1842, Mananui said to him:

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[10] The New Zealand Company was an immigration company aimed at creating a new settler nation in New Zealand based on agriculture and farming. The company set about acquiring lands as cheaply as they could from local Māori, and marketed New Zealand to the poor and desperate of Britain as a place where they could build a better life. The New Zealand Company organised the settlement of six New Zealand towns and cities, one of which was Whanganui (then Wanganui).

[11] Edward Jerningham Wakefield, *Adventure in New Zealand from 1839 to 1844; with Some Account of the Beginning of British Colonization of the Islands*, II vols., vol. II (London: John Murray, 1845), 113.

[12] Ibid.

[13] The explorer Kerry-Nicholls, for example, attempting a climb of Tongariro in 1872, feared attack from the local chief Te Hau. J. H. Kerry-Nicholls, *The King Country; or, Explorations in New Zealand: A Narrative of 600 Miles of Travel through Maoriland* (London, reprinted Christchurch: Sampson Low, Marston, Searle & Rivington, reprint published by Caxton Press, Christchurch, 1884, reprinted 1974), 177-8.

[14] J. Cowan, *Sir Donald Maclean: The Story of a New Zealand Statesman* (AH and AW Reed, 1940), 16. Cowan spells his name Maclean because that was how his son spelt it. It is more commonly written as "McLean. "

[15] Iwikau succeeded Mananui as paramount chief when the former died in 1846, and became Iwikau Te Heuheu Tūkino III. See the brief genealogy at xxx

[16] Cowan, *Sir Donald Maclean: The Story of a New Zealand Statesman*, 17.

[17] Angela Ballara, "Tribal Landscape Overview, C.1800-C.1900 in the Taupō, Rotorua, Kaingaroa and National Park Inquiry Districts," (Crown Forestry Rental Trust, September 2004), 401-2.

> I am king here, as my fathers were before me, and as King George and his fathers have been over your country. I have not sold my chieftainship to the Governor, as all the chiefs round the sea-coast have done, nor have I sold my land. I will sell neither … You White people are numerous and strong; you can easily crush us if you choose, and take possession of that which we will not yield; but here is my right arm, and should thousands of you come, you must make me a slave or kill me before I will give up my authority or my land … Let your people keep the sea-coast, and leave the interior to us, and our mountain, whose name is sacred to the bones of my fathers.[18]

Wakefield assured him that "…the southern *pakehas,* at least, would never annoy him by any attempts to wrest from him his chieftainship or his land," and moved on to Whanganui.[19]

The Upper Whanganui, at this time, was also hard to access. When Donald McLean, later to be an important politician, but at the time an official in the office of the Protector of Aborigines, visited the upper Whanganui in 1845, the area had "rarely been visited by Europeans."[20] There was a missionary based at Whanganui, however, where there was none in Taupō. His name was the Reverend Richard Taylor, and he travelled up and down the river to visit Whanganui Māori. The politics of the river was complicated. David Young explains that the Whanganui tribes could roughly be segmented into three groupings according to their attitude to Europeans: the pro-Pākehā tribes of the "lower river, the hostile "upper river" groups[21] and the groups along the middle stretches who were pro- or anti-Pākehā at different times. These distinctions did not always hold, however.[22]

Several of the important upriver Whanganui chiefs signed the Treaty, with Topine Te Mamaku of the upriver hapū Ngāti Haua being a notable exception. David Young, who wrote a history of the Whanganui River, considers it most likely this was a considered choice rather than a historical accident.[23] Te Mamaku was involved in fighting against Pākehā in the Hutt Valley, north of Wellington, and in Whanganui, in the 1840s.

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[18] Wakefield, *Adventure in New Zealand*, vol II., 112.
[19] Ibid., 113. I am not sure what Wakefield meant by 'southern' Pakeha – perhaps he is just referring to the settlement of Wellington, where he and his father landed on the first settler ship, the *Tory,* in 1839.
[20] Cowan, *Sir Donald Maclean*, 20. This was possibly because Mananui was outspokenly opposed to the spread of Christianity, especially among Tūwharetoa people. See ibid., 21; Wakefield, *Adventure in New Zealand,* vol II., 117.
[21] A Pākehā shorthand for the two thirds of the river upstream. Young suggests the term "upriver" as applied to Whanganui Māori might have been based more as a statement of perceived anti-Pākehā politics than geographical positioning. Young, *Woven by Water*, 21.
[22] Ibid., 20-1.
[23] Ibid., 29. Te Mamaku was from Taumarunui.

There were several violent incidents between Māori and settlers in the years following the Treaty, some involving the deployment of British soldiers. Not long after the Treaty was signed, in 1845-6, fighting broke out between British forces and Māori in the northern North Island. Hone Heke, the first chief to sign the Treaty, repeatedly felled the flagpole at Kororāreka (present-day Russell). When British security around the pole intensified, Heke allied with another prominent local chief, Kawiti, and their men attacked the soldiers stationed at Kororāreka, beginning a series of battles lasting a year.

In the Wellington region there were tensions over land sales which culminated in a short series of battles in 1846, in which the Whanganui chief Topine Te Mamaku was involved.[24] Later the same year, in Whanganui, an accident in which a Pākehā midshipman shot an old local chief sparked a series of violent incidents along the river. Tensions were already high between settlers and upriver Māori, and a stockade full of almost 200 British soldiers had been built in 1846, before the accident occurred. Although the chief accepted that it was an accident, the British mishandled the situation by hiding the midshipman away in the stockade.[25] Six of the injured chief's young relatives retaliated by attacking a settler family in their home, killing most of them. Several of the local Pūtiki Māori assisted the British soldiers by tracking down the killers. Five of the six were delivered to the stockade, and three were hanged. In response to the hangings, and the actions of the Pūtiki Māori in capturing the young men, Te Mamaku, along with the chiefs Maketu, Ngapara and Te Pehi Turoa, led 600 men into the Pākehā settlement at Whanganui. The war party occupied parts of the settlement and forced most settlers into the stockade, or out of Whanganui altogether. Fighting continued for several weeks. Maketu was killed, but the casualties on both sides were low and a truce was called in the spring.[26]

Land loss and Māori political movements

The decades following the Treaty saw a vast amount of land pass out of Māori ownership and into the hands of settlers and the state. Richard Boast puts the figure at nearly two-thirds of the country by 1860 – most of this accounted for by the Kemp purchases of almost the whole South Island, but a substantial amount of land was alienated in the North Island as well.[27] Many Māori leaders were concerned with the

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[24] James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland: Penguin Books, 1986), 73-4.
[25] Young, *Woven by Water*, 35.
[26] Ibid., 35-38.
[27] Boast, *Buying the Land, Selling the Land,* 26.

pace of land loss, and a movement began in the western and central North Island calling for a halt to land sales, and a measure of Maori self-government. What form this self-government would take was discussed at a series of meetings in the 1850s, and a Kingship was decided upon. A selection of chiefs with the requisite lineage, wealth and standing were offered the title of King. Included among them were Iwikau Te Heuheu[28] and Topia Tūroa, a great chief of the Whanganui district, both of whom refused.[29] At a hui held at Pūkawa, Iwikau's base on the southern shore of Lake Taupō, it was decided that the Kingship would be offered to the Waikato chief Pōtatau Te Wherowhero, who was well-positioned in the centre of the North Island. After some persuading, Pōtatau accepted the role.[30]

Lindsay Cox, in his book on Māori unity movements, described the motivations behind the 'King movement' or 'Te Kīngitanga,' and said the most important of these was to halt the sale of land. Te Kīngitanga was to be "a recognized institution to control Māori land interests." [31] The idea of a central authority was an attempt to emulate the unity they perceived as being key to Pākehā strength. The individual chiefs were to retain their authority over their own people, but become part of a larger alliance. The movement was not anti-Pākehā: Ballara argues that Pōtatau Te Wherowhero was chosen partly because of his good relationship with successive Pākehā governors.[32] Wiremu Tamihana, a key figure in the King movement, wrote to Governor Gore-Browne in 1861, saying: "I do not desire to cast the Queen from this island…but from my piece. I

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[28] Iwikau Te Heuheu Tūkino III, Mananui Te Heuheu's younger brother, who succeeded him in the paramountcy. Mananui was killed in a terrible landslide in 1846, which wiped out the village of Te Rapa on the southern shore of Lake Taupō and killed over 50 people. Mananui Te Heuheu's only surviving son was renamed Horonuku (landslide) to memorialise the event. Horonuku succeeded Iwikau to the paramountcy in 1862.

[29] Ballara, "Tribal Landscape Overview, C.1800-C.1900 in the Taupō, Rotorua, Kaingaroa and National Park Inquiry Districts," 439. She cites her reference for the offer to Topia Tūroa comes as the journals of Richard Taylor, Vol.X, 127, held at the Auckland Institute and Museum. David Young says that the offer was to Te Pehi Pakaro Turoa, Topia's father, but his source for this is unclear. Young, *Woven by Water*, 39.

[30] Ballara, "Tribal Landscape Overview, C.1800-C.1900 in the Taupō, Rotorua, Kaingaroa and National Park Inquiry Districts," 439.

[31] Lindsay Cox, *Kotahitanga: The Search for Māori Political Unity* (Melbourne: Oxford University Press, 1993), 46.

[32] Angela Ballara, "Introduction " in *Te Kīngitanga: The People of the Māori King Movement: Essays from the Dictionary of New Zealand Biography* (Wellington: Auckland University Press with Bridget Williams Books and the Dictionary of New Zealand Biography, 1996), 7.

am the person to look after my piece."[33] Kingitanga supporters did, however, monitor the presence of Pākehā within their borders and many Pākehā were refused entry.[34]

Ngāti Tūwharetoa were heavily involved in Te Kīngitanga – Iwikau Te Heuheu, as previously noted, hosted the meeting at which the King was selected, and had been a contender for the role himself. He is said to have raised a flagstaff at that meeting, with flax ropes attached to it. He explained that the flagstaff was Tongariro, the central mountain of the North Island. The ropes were then cast out to the gathered chiefs, and they were invited to name the sacred mountains of their tribe, and tie the rope to a peg in front of their group to signify their support to the Kingitanga. Cox described this as "a powerful representation of the steadfast support of the Kingitanga which existed by 1857."[35] Support for Te Kingitanga was also widespread in the Upper Whanganui regions, where some hapū started restricting Pākehā access to the river.[36]

In 1860, in the western North Island province of Taranaki, a dubious land sale sparked a war between the British forces and a group of Taranaki Māori led by the chief Wiremu Kingi. Just weeks after the fighting in Taranaki began, several Whanganui chiefs (Te Hipango and the brothers Te Mawae and Hōri Kingi Te Anaua) organised a rally in Whanganui to express loyalty to the settlers. About 300 Maori and 100 settlers heard their offer of support "to God, the law and the Bible in a sacred covenant."[37] Some of the Kingitanga Māori came to assist in the fighting in Taranaki, which was the justification used by Crown officials for the British invasion of the Waikato, also known as the King Country, in 1863.

During the warfare in the King Country some Tūwharetoa warriors fought alongside the Waikato tribes, most notably at Orakau, where the Tūwharetoa chiefs Wi Kohika and Te Paerata were killed, along with many of their followers. Horonuku Te Heuheu (the son of Mananui) also went to Orakau but arrived too late to join the warriors at the *pā* (fortified village).[38] Some upper-Whanganui Māori also fought in the Waikato battles – Topine Te Mamaku was present at Orakau, with a section of his Ngāti Haua hapū.[39]

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[33] Tamehana to Gore Browne, June 7, 1861, Appendices to the Journal of the House of Representatives (AJHR), E-1B, 19, cited in James Belich, *Making Peoples: A History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century* (Auckland: Penguin Books, 1996), 234.
[34] Young, *Woven by Water*, 47.
[35] Cox, *Kotahitanga*, 50-1.
[36] Young, *Woven by Water*, 47.
[37] Ibid.
[38] Grace, *Tuwharetoa*, 463-9.
[39] Ballara, "Tribal Landscape Overview," 452.

A number of new religious movements sprang up around Aotearoa during this period, combining parts of Christianity with Māori practices and beliefs. One of these new religions was Pai Mārire, or Hauhauism, which began as a peaceful movement in Taranaki, but many of its later offshoots were violent. Hauhauism spread across the upper reaches of the Whanganui, overlapping heavily, but not entirely, with Kingitanga support.[40] Whanganui Hauhauism was of the militant variety, and in 1864 an attack on the Pākehā settlement at Whanganui (then Wanganui) was planned. The downriver chiefs who had pledged to protect the settlement issued a challenge to the Hauhau, with whom they shared close kinship ties, to fight. In a ritualised battle at Moutoa (also known as Pākaitore), where a deliberately limited number of fighters were pitted against each other, the Hauhau were defeated with many losses. The battle of Moutoa has been remembered bitterly by the people of the Whanganui River as a conflict in which brothers killed brothers.[41]

The central North Island was to see another round of warfare in the late 1860s, when the prophet leader Te Kooti Arikirangi Te Turuki (Te Kooti), who had attacked Pākehā settlements on the East Coast, came to the volcanic plateau to try and establish a new base. Leaving some of his followers in Tokaanu he travelled, in the company of Horonuku Te Heuheu, to seek the support of King Tawhiao (Pōtatau Te Wherowhero's son and successor). Horonuku later fought alongside Te Kooti at Te Porere, very close to the national park, where they were defeated by a confederation of British and pro-government Māori troops from the lower Whanganui region, led by Te Keepa Te Rangihiwinui (Te Keepa), in 1869.[42] Te Kooti took refuge in the King Country, and did not re-emerge.

The participation of Te Heuheu and his men in this warfare is still controversial. Te Kooti may have forced him to come and fight. It is also possible that his participation was entirely voluntary. Ken Gartner explains the difficult position Horonuku would have been in, whether or not Te Kooti attempted to force him:

> On the one hand, he had to maintain his mana amongst those Ngāti Tuuwharetoa who supported Te Kooti, and on the other hand, Te Kooti was obviously a threat to his mana as paramount chief of the Ngāti Tuuwharetoa tribe. His difficulty was in maintaining his mana in the face of both of these threatening forces while simultaneously hoping not to

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[40] Young, *Woven by Water,* 56-64.
[41] Young, *Woven by Water,* 64.
[42] Te Keepa Te Rangihiwinui was also known as Major Kemp. He was a famous leader of pro-government Māori troops.

> diminish his mana later with the government and those (including various Tuuwharetoa hapuu) allied with it in deadly opposition to Te Kooti.[43]

Gartner considers it most likely that Te Heuheu joined Te Kooti with some reluctance.[44]

After the defeat at Te Porere, the colonial government also had a difficult decision to make regarding their treatment of Horonuku. They wanted to punish him for his involvement in the warfare, but not severely, as they sought him as an ally in the central North Island, which the government was very anxious to open up to settlement and, more particularly, to a central railway line.[45] Horonuku was placed under temporary house arrest on the east coast, but was soon freed without trial.[46]

The Native Land Court

The Native Land Court was set up by the Native Land Acts of 1862 and 1865, and evolved through the various further Native Lands Acts and amendments of the 1860s and seventies. Its purpose was to hear claims regarding the ownership of Māori land and award title to lists of individual owners. This was seen as essential for the progress of the New Zealand economy, by changing Māori customs of communal ownership into Pākehā customs of legal title, and allowing Māori to 'develop' their land, or to sell it to Pākehā settlers. In practice it was an enormously effective vehicle for separating Māori from their lands. James Belich describes a 'vortex' created by the cost of attending court procedures, and of having land surveyed, and forcing Māori to sell their land to pay off the debt incurred by proving their ownership of the same land.[47] The need for claimants to be present at hearings in order to have their rights acknowledged created injustices for those unable to attend hearings, sometimes because they were attending other Native Land Court hearings running at the same time. Sir Hugh Kawharu called the court "a veritable engine of destruction for any tribe's tenure of land anywhere."[48] A recent book by Richard Boast provides a reminder that many of the land sales were entered into freely and willingly by Māori, but there is no doubt that the process was open to corruption.[49]

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[43] Kenneth Conrad Gartner, "Te Kooti Arikirangi Te Tuuruki: His Movements and Influence within the Ngaati Tuuwharetoa Region 1869-70." (Master's Thesis, Victoria University of Wellington, 1991), 164-5.
[44] Ibid., 165.
[45] Robyn Anderson, *Tongariro National Park*, 48, 63.
[46] Ibid., 48.
[47] Belich, *Making Peoples*, 258-9.
[48] Ian Hugh Kawharu, *Maori Land Tenure: Studies of a Changing Institution* (Oxford: Clarendon Press, 1977), 15.
[49] Boast, *Buying the Land, Selling the Land*.

Throughout the 1870s Tūwharetoa land remained in the King Country, unsurveyed and in Tūwharetoa control. The Native Land Court was encroaching on the area, however, and Horonuku Te Heuheu faced the prospect of having other iwi claim the margins of his lands. Seeking to have a Court hearing to establish the boundaries between the lands of Tūwharetoa and their easterly neighbour, Ngāti Kahungunu, he found that a recent amendment to the *Native Land Act* meant that a hearing to establish a border was no longer possible.[50] In order to have the boundary line established it was necessary to put all Tūwharetoa lands through the court, and in 1886 Horonuku put the Tauponuiatia block before the Native Land Court. Angela Ballara offers an explanation of his motivations in doing so:

> The Taupōnuiatia block was born of anxiety for the future. Horonuku was trying to put a boundary around his people's lands, including those of his wider kin links outside of Taupō, within which control should remain in the hands of the Māori owners of the land … It was clear at the great meeting at Poutū in September 1885 that Ngāti Tūwharetoa opinion was far from united as to the proper course of action: whether to renew the 1856 covenant of Iwikau and join with the Kīngitanga, boycotting the Land Court and most other colonial institutions, or to permit the Court's workings and all that went with it.[51]

The mountains were part of the southern Tauponuiatia lands. There is some evidence that Horonuku was worried by the idea of the mountain lands going through the Native Land Court. James Cowan, who wrote the first Tongariro National Park handbook in 1927, provided a reconstructed account of what Te Heuheu said to Laurence Grace (Horonuku's son-in-law, and son of the missionary Thomas Grace), regarding the prospect:

> "If", he said, "our mountains of Tongariro are included in the blocks passed through the Court in the ordinary way, what will become of them? They will be cut up and perhaps sold, a piece going to one *pakeha* and a piece to another. They will become of no account, for the *tapu* will be gone. Tongariro is my ancestor, my *tupuna*; it is my head; my *mana* centres round Tongariro. My father's bones lie there to-day. You know how my name and history are associated with Tongariro. I cannot consent to the court passing these mountains through in the ordinary way. After I am dead, what will be their fate? What am I to do about them?[52]

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[50] W. W. Harris, "Three Parks: An Analysis of the Origins and Evolution of the New Zealand National Park Movement" (Master's Thesis, University of Canterbury, 1974), 51.
[51] Ballara, "Tribal Landscape Overview, C.1800-C.1900 in the Taupō, Rotorua, Kaingaroa and National Park Inquiry Districts," 146.
[52] James Cowan, *The Tongariro National Park* (Wellington: Tongariro National Park Board, 1927), 30-1.

In response Laurence Grace is alleged to have suggested "why not make them a *tapu* place of the Crown, a sacred place under the *mana* of the Queen?"[53] Cowan lists Laurence Grace among his informants so the quote probably comes from him. Tureiti Te Heuheu, Horonuku's son, was also one of the listed informants. Grace had become the Member of Parliament for Tauranga in 1885, and the Native Minister, John Ballance, seems to have urged him to talk to his father-in-law about the mountains.[54] It is most likely that Laurence Grace raised the idea of gifting the mountains with the paramount chief, although there was also a meeting between Ballance and Horonuku where the matter was discussed.[55]

The idea of a national park

In 1872, the United States federal government passed the *Yellowstone National Park Act*, making more than 3000 square miles of Wyoming into the world's first national park.[56] The resident Native American population was forcibly removed in order for the park to become an uninhabited wilderness.[57] The idea caught on, and national parks began to appear in other British settler nations. The park that is now called the Royal National Park was created in Sydney, Australia in 1879, and Banff National Park was established in the Rocky Mountains of Canada in 1885. A prominent New Zealand politician and former Premier, William Fox, visited Yellowstone National Park, and the Yosemite Valley (then a Californian state park) in 1873, and wrote to the then Premier of New Zealand, Julius Vogel, the following year:

> It is not my intention to dilate on the wonderful and the beautiful which abound in connection with Rotomahana and its terraces. I wish rather to draw attention to the different groups of springs, with a view to their sanitary use …The government of the United States had hardly become acquainted with the fact that they possessed a territory comprising similar volcanic wonders at the forks of the Yellow River and Missouri, than an act of Congress passed reserving a block of land of 60 miles square, within which the geysers and hot springs are, as public parks, to be for ever under the protection of the States; and it will doubtless take care that they shall not become the prey of private speculators, or of men to whom

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[53] Ibid.
[54] Laurence Grace to Ballance, 6 January 1886, LS 1-29805, National Archives, Wellington.
[55] Notes from an interview between The Hon. Te Heuheu Tukino, M.L.C, and The Hon W. Nosworthy, Minister of Tourist and Health Resorts, Wellington, 13 November 1922. TO 1 52/54, National Archives.
[56] Roderick Nash, *Wilderness and the American Mind*, 2nd ed. (London: Yale University Press, 1973), 112.
[57] Stephen Germic, *American Green: Class, Crisis, and the Deployment of Nature in Central Park, Yosemite, and Yellowstone* (Lanham, Maryland: Lexington Books, 2001), 9.

> a few dollars may present more charms than all the finest works of creation.[58]

Hot springs were an initial focus of reserve-making, as they were considered to have healing properties. In 1881 the *Thermal Hot Springs Act* was passed, and tourism facilities were established at Rotorua and Te Aroha.[59]

The idea of reserving areas into public ownership for public use had precedent in New Zealand. Queen Victoria's instructions to the first Governor mentioned reserving "places fit to be set apart for the recreation and amusement of the Inhabitants of any Town or Village or for promoting the health of such Inhabitants."[60] What distinguished a national park from any other kind of reserve in New Zealand was not a clearly defined concept in this period. Queen Victoria's instructions are a rough description of what a park or reserve meant at the time, and a national park, (distinguished, in the United States, from State Parks) was the same idea taken to a larger scale. "National park" was a grand title to be bestowed on grand scenery, particularly if it contained hot pools, and beyond that there was very little idea of a national park's purpose or how precisely to protect it, other than to keep its ownership out of private hands. In Tongariro this is perhaps best illustrated by the fact that nothing *was* done to protect it until a position of "Honorary Ranger" was created in 1914.[61] The board constituted under the 1894 Act to manage the park did not meet until after 1900, was abolished in 1914, and did not meet regularly until after it was reconstituted in 1922.

Park advocates and government agents were motivated to acquire the central North Island mountains for a national park by a mixture of ideas about what a national park was, or could be. The mountains were prized for the recreational opportunities they offered in the form of hiking, mountaineering and skiing, as well as the potential for these activities to be lucrative tourist attractions. The demand for public hot springs was a feature of Tongariro's appeal as a national park; the Ketetahi Springs were often referred to in comments recommending reserving the area. The grandeur and wonder of the scenery were also frequently mentioned. There was an idea of the mountains, all active volcanoes, as a scientific learning ground, and the strong probability that New

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[58] Fox to Vogel, 1 August 1874, *AJHR,* H26, 1874.
[59] Lake Rotomahana, near Rotorua, was then the centre of tourist activity, but the eruption of Mt Tarawera on 10 June 1886 destroyed the pink and white terraces for which it was so popular.
[60] Queen Victoria's instructions to the first Governor of New Zealand, 5 December 1840, Repro 13, No. 43, National Archives, cited in Robin Hodge, *The Scenic Reserves of the Whanganui River 1891-1986* , Wai 903, #A34, (commissioned by the Waitangi Tribunal, 2002), 12.
[61] Brad Coombes, *Tourism Development and Its Influence on the Establishment and Management of Tongariro National Park*, Wai 1130, #I1, (commissioned by the Crown Forestry Rental Trust, 2007), 141.

Zealand politicians wished to keep up with the international Joneses – by 1885 the United States, Australia and Canada all had national parks. William Fox either felt or played into this competitive streak when he wrote that the Americans had, without hesitation, made a similar area into a national park.[62]

One of the main purposes of a national park today, as a place for native species to live and be protected, was conspicuously absent from the government's motivations for making the mountains a national park. Tongariro's first ranger, John Cullen, was in fact very eager to make the park a place for introduced species, particularly of the sort that were good sport for hunting. He introduced deer, grouse, and heather to provide a habitat for the grouse. His practices were not shut down by the National Park Board until 1926.[63] Park management staff at Tongariro still struggle today to contain the heather and deer that Cullen lovingly introduced to the slopes more than a hundred years ago.

A nascent movement towards protecting native species was occurring in some circles in New Zealand in the 1870s, but these ideas were not discernable in the debates around reserving Tongariro. Early environmentalism in New Zealand was focused on the protection of the 'wilderness,' especially rivers, forests and endangered species. It stemmed from concern, beginning in the mid 1800s, that some of New Zealand's native forests and birds were in danger of eradication.[64] Acclimatisation societies, established across the country to bring in and manage new populations of exotic plants and animals, mainly brought from Britain, played a vital role in both the decline in native birds and plants, and the early efforts to protect them.[65] The first campaigners for protection measures over certain native plants and animals, (who were often primarily concerned with ensuring future supply of these species as resources), had to fight against a prevailing belief that the replacement of indigenous species by plants and animals from the Northern hemisphere was a natural evolutionary process.[66] The death of many Māori from European diseases was also seen as part of this trend.[67]

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[62] Fox to Vogel, August 1 1874, in *AJHR* H26, 1874.
[63] Meeting of the Tongariro National Park Board, 7 June 1926, TO 1 52/59/1 part 1, National Archives.
[64] Ross Galbreath, "Displacement, Conservation and Customary Use of Native Plants and Animals in New Zealand," *New Zealand Journal of History* 36, no. 1 (2002): 37.
[65] See Paul Star, "New Zealand's Changing Natural History: Evidence from Dunedin, 1868-1875.," *New Zealand Journal of History* 32, no. 1 (1998); Ross Galbreath, *Working for Wildlife: A History of the New Zealand Wildlife Service* (Wellington: Bridget Williams Books Limited, 1993).
[66] Galbreath, "Displacement, Conservation and Customary Use," 36-7.
[67] Ibid., 36.

Māori had been expressing concern about the disappearance of the forests and birds years before the alarm was raised by Pākehā observers. A Māori newspaper, *Te Hokioi,* entreated its readers in 1863 to stop burning the forests, or there would be no trees left for future generations.[68] Their concern was for their food resources, particularly the native birds, and criticism was also levelled at European practices of hunting for sport rather than food.[69] The idea of creating reserves, however, was a uniquely European response to the problem.[70]

During the 1890s, support for scenery protection was growing, both inside and outside parliament. From 1888, Scenery Protection Societies began to be established in most of the main towns and cities in the country. These societies, composed largely of middle-class professional men, had a reverence for nature, and encouraged others to experience it for themselves. They also advocated for the protection of breeding areas for native birds, and the setting aside of forest remnants, especially near urban areas. Their successes were largely dependent on such areas not being of major commercial value.[71]

The beginnings of Tongariro National Park

The beauty of the Tongariro area received national attention when, in 1883, J.H Kerry-Nicholls began his travels in the King Country. Instalments of his travel writing were published in the *New Zealand Herald* (a widely read newspaper based in Auckland), and the following year the collated columns were published as a book. As part of his travels he climbed both Tongariro/Ngauruhoe and Ruapehu. Kerry-Nicholls' account contains the first written suggestion of reserving land in the Tongariro area, specifically the Te Pakaru plain, a stretch of land to the northwest of the mountains, as a "public domain":

> …a region designed, as it were, by the artistic hand of nature for a national recreation-ground, where countless generations of men might assemble to marvel at some of the grandest works of the creation.
>
> With the Te Pakaru Plain proclaimed as a public domain, New Zealand would possess the finest and most unique park in the world. For healthfulness of climate, variety of scenery, and volcanic and thermal wonders, there would be no place to equal it in the northern or southern

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[68] Ibid., 42.
[69] Galbreath, "Displacement, Conservation, and Customary Use," 43.
[70] Geoff Park, *Effective Exclusion? An Exploratory Overview of Crown Actions and Maori Responses Concerning the Indigenous Flora and Fauna, 1912-1983* (Wellington: Waitangi Tribunal, 2001), 318-9.
[71] Paul Star and Lynne Lochhead, "Children of the Burnt Bush: New Zealanders and the Indigenous Remnant, 1880-1930," in *Environmental Histories of New Zealand*, ed. Eric Pawson and Tom Brooking (Melbourne: Oxford University Press, 2002), 124-5.

> hemisphere, no spot where within so small a radius could be seen natural phenomena so varied and so remarkable. It would embrace within its boundaries the hot springs of Tongariro and those of Tokanu [sic], and would stretch from the waters of Lake Taupo to the shores of Rotoaira. The surrounding table-land, with its millions of acres of open plains covered with rich volcanic soil, should eventually become the granary of the North Island; while the Kaimanawa Mountains and the Tuhua should give forth their mineral treasures on either side.[72]

In 1884 the question was raised in Parliament: would the government take steps to reserve the mountains of Tongariro, Ngauruhoe and Ruapehu as a national park?[73] The Lands Minister, John Ballance,[74] to whom the question had been addressed, replied that at present they could not, as the mountains were not within the purview of the *Thermal Springs Act*. He added, however, that the government would do all they could to prevent the mountains from falling into private ownership until some kind of reserve could be made.[75]

By 1886 the reservation of the mountains had become one of Ballance's four main priorities in the area, as recorded by Laurence Grace:

> 1st the acquirement on behalf of the Crown of lands in the interior of the North Island, as near as possible to the Main Trunk Line of Railway now in the course of construction by the Government.
>
> 2nd That the Ruapehu, Ngauruhoe, Tongariro mountains and the principal thermal springs in the Taupo country be made inalienable reserves.
>
> 3rd That every endeavour should be made to settle the Native tribes of Taupo permanently on portions of their tribal lands which can only be done by putting their lands through the Court and individualising their titles thereto as thoroughly as possible.
>
> 4th That a land court be ordered to sit at Taupo to enable the Natives to give effect to these objects.[76]

The last of these objectives was in motion from October 1885, when Te Heuheu and "the Natives of Taupo" made an application for the Tauponuiatia block to the Native Land Court. A letter from Ballance to Laurence Grace at the time agreed that "the present time appears to offer special facility" for the acquisition of large amounts of unoccupied land in the Taupō area, and reiterated that:

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[72] Kerry-Nicholls, *The King Country*, 302-3.
[73] Raised by Alfred Newman, MP for Thorndon, 17 October 1884, *NZPD,* vol. 49, 1884, 532.
[74] Ballance also held the Native Affairs, Immigration and Defence portfolios.
[75] 17 October 1884, *NZPD,* vol. 49, 1884, 532.
[76] As communicated to Laurence Grace in a conversation at Parliament, and recalled by Grace in a letter to Ballance. Grace to Ballance, 6 January 1886, in LS 1-29805, National Archives.

> It is my intention that the Ruapehu, Ngauruhoe, and Tongariro mountains and the principal thermal springs should be made inalienable reserves absolutely inalienable except to the Crown.[77]

The negotiations over the mountain lands were conducted with this potential gift in mind. In the Native Land Court hearings in early 1886, title to the Tongariro 1 and Ruapehu 1 blocks, which covered a land area within a two and three mile radii around the Tongariro and Ruapehu peaks, were each issued to seven chiefs. Further subdivision had to be negotiated in order for Horonuku Te Heuheu's name to be vested alone in the peaks. Horonuku's immediate hapū was Ngāti Tūrumākina, based at Waihi on the southern shores of Lake Taupō; there were other hapū living closer to, sometimes even *on,* the mountains. Horonuku therefore had to seek the approval of the local chiefs in order to have his name placed alone on the title to the blocks containing the peaks of the mountains. These negotiations were successful; the peaks, or blocks Tongariro 1A and Ruapehu 1A, which were comprised of the land within one mile radii of the peaks, were vested solely in Horonuku Te Heuheu. On September 27th 1887, Horonuku signed the title over to Queen Victoria in a deed of conveyance.

Five days before the signing, Horonuku had sent a letter to the Minister for Native Affairs, John Ballance. In it he informed Ballance that he and some of his people had just spent several days talking to the Under-secretary of Native Affairs, T.W. Lewis, about making the mountains a national park. He wrote that they regarded it as "a matter of great importance"[78] and that "the minds of some of my people were not clear on the subject."[79] Horonuku confirmed that he would make a gift of the peak blocks, as he had promised to Ballance at Rotorua. He made two requests to Ballance in the letter: firstly for the bones of his father Mananui to be removed from the mountain and a tomb erected for him by the Government, and secondly that when he, Horonuku, died, his son Tureiti would inherit the position of Trustee of the national park.[80]

On the 26th of September that year there was a change of government, but Lewis received the letter, and wrote back to Horonuku saying that both Ballance and his successor, Edwin Mitchelson, had read his words. Lewis confirmed that both Horonuku's requests would be carried out by the government, and passed on

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[77] Ballance to L M Grace, 7 January 1886 in LS 1-29805, National Archives.
[78] *He mea nui rawa.*
[79] *Kihai ano nga whakaaro o etahi o nga tangata o taku iwi i tino marama ki tana mea.*
[80] Te Heu Heu to Ballance, 23 September 1887, in MA-MLP 1 1903/118, part 1, National Archives.

Mitchelson's thanks "for the manner in which you have carried out your promise of a gift…"[81]

At the time there was some resistance to the alienation of the peaks, and the purchasing of the lands around them. These protests came from within Tūwharetoa and from surrounding tribes. In May 1887 the Tūwharetoa chief Te Huiatahi (one of the owners of Ruapehu land), on behalf of himself and 180 others, wrote to Ballance protesting at the notion that Horonuku alone should be allowed to give away the land as a public recreation ground. The letter called the relationship between Horonuku and 'Mr. Grace' (probably Laurence's brother William, a land agent), that of 'confederates' conducting secret dealings that excluded the rest of Tūwharetoa.[82] Groups from Whanganui and Ngati Kahungunu, the iwi to the east of the mountains, both had grievances over the Tauponuiatia hearing. The Whanganui chief Te Keepa made a petition complaining that Whanganui mana over the mountains had not been acknowledged.[83] The large number of petitions against the Native Land Court's judgements on the Tauponuiatia block led to the Tauponuiatia Royal Commission in 1889, but the southern blocks, which included the mountain lands, were not reconsidered.

The 'Gift'

There is little evidence available about Horonuku's motivations for signing the deed of gift, or his understanding of the transaction. There is Cowan's account, probably from Laurence Grace, which describes Horonuku being afraid that the land would be subdivided and sold to Pākehā if he did not intervene. The previously mentioned letter from Horonuku to the Native Minister, Ballance, on the 23rd of September 1887, suggests that there was dissent, or at least confusion, among Ngāti Tūwharetoa about the conveyance, which concerned him. Forty-five years later, a conversation between Tureiti Te Heuheu (Horonuku's son) and the Minister for Tourist and Health Resorts, through a translator, Captain Vercoe was transcribed by an unknown note-taker and indicates that Tureiti, and probably his father also, believed that the Te Heuheu family had retained shares in the title of the peak blocks:

> …seeing the other Rangatiras my Father put into the other sub-division had consented to sell, and the Government were acquiring that part of the country, and also that the Prime Minister had agreed that the portion asked for by my Father be set aside for himself, and should be held

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[81] Lewis to Te Heuheu, 13 October 1887, in MA-MLP 1 1903/118, part 1, National Archives.
[82] Te Huiatahi to Te Paranihi [Ballance], 9 May 1887, MA-MLP 1, 1903/118, National Archives.
[83] Harris, "Three Parks," 56-7; Anderson, *Tongariro National Park*, 71.

> sacred, he made a request at that time … (that is, Mr Lewis made the request) that my Father should agree that the Queen be put into the Title along with himself, so that the Crown should be represented in the Title of that partition/ I was present, and my Father (I was his only son) asked me what I thought about that arrangement. I then said to my Father that I thought he should agree to the request made by Mr Lewis, as it would be a very great honour to him to have the name of the Queen as co-owner, as it were, in that partition. It was decided that that should be – and that Queen Victoria should be a life member. When the Board was set up the Queen's name was mentioned as being a life-member of the Board – my Father was to be a life member of the Board, and at his death I was to take his place, and be also appointed a life member of that Board during my life-time. Then he signed that agreement.[84]

If translated and recorded accurately, this would imply that Horonuku believed himself to be retaining the title of the peak area, in conjunction with the British monarch. Tureiti would have been in his early twenties when the gift was being negotiated, and by the time of the gift was running his father's affairs, so it seems likely he had a good understanding of the events at the time.[85]

Some historians have speculated that the gift can perhaps be seen as a statement of *mana* on Horonuku's part, asserting his connection with the mountains above that of other chiefs or tribes. Judith Binney argues that the claims of Te Keepa Te Rangihiwinui, the Whanganui chieftain who had fought with the government at Te Porere, over his rights to the southern Tauponuiatia lands, including the mountains, was a factor in Horonuku's decision to gift the lands to the Crown.[86] David Young advances a similar argument, calling the gift "a delicate piece of democracy," in which Horonuku was attempting to patch up the rift with the government caused by his involvement with Te Kooti, and to re-assert his mana over the still-divided Ngāti Tūwharetoa people.[87] Neither Binney nor Young questioned whether the 1887 signing was intended as a gift.

A hundred years on from the signing of the deed of conveyance, Horonuku's actions had passed into tourism legend as a generous gift which had created "the first national park in New Zealand, and the fourth in the world,"[88] and "the first national park in the world to be gifted by a country's indigenous people."[89] A 1987 article in the Air New

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[84] Notes from an interview between The Hon. Te Heuheu Tukino, M.L.C, and The Hon W. Nosworthy, Minister of Tourist and Health Resorts, Wellington, 13 November 1922. TO 1 52/54 1920-1954, National Archives.
[85] Gartner, Ken Te Huingarau. 'Te Heuheu Tukino V, Tureiti 1865/1866? - 1921.' *Dictionary of New Zealand Biography*, updated 22 June 2007, http://www.dnzb.govt.nz/.
[86] Binney, *Redemption Songs,* 506.
[87] Young, *Woven by Water*, 140.
[88] Department of Conservation website: http://www.doc.govt.nz/parks-and-recreation/national-parks/tongariro/.
[89] Ruapehu District Council website: http://www.visitruapehu.com/exec/113221/4311/.

Zealand magazine *Pacific Way* celebrated the centenary of Tongariro, and called the gift "an act of great foresight" on the part of Horonuku Te Heuheu, safeguarding the mountains from encroaching settler interests, or dissection between tribes.[90] In the same year, Sir Hepi Te Heuheu, the great-grandson of Horonuku, wrote:

> The gift says these sacred mountains are owned by no-one and yet are for everyone. My Tuwharetoa people wish the gift to be remembered for all time. The mountains of the south wind have spoken to us for centuries. Now we wish them to speak to all who come in peace and in respect of their tapu. This land of Tongariro National Park is our mutual heritage. It is a gift given many times over.[91]

Richard Boast, in a special submission to the National Park inquiry, pointed out that as unique and interesting as the 'gift' of the peaks was, and notwithstanding the fact that a special Act of Parliament set the area aside as a national park, most of the lands of Tongariro National Park were acquired by the government using its ordinary means. These means were the investigation of title under the Native Land Court, the buying of undivided shares by the Crown, and the partition of the land into 'Crown' and 'non-sellers' portions.[92] Laurence Grace and his brother William were instrumental in this process.[93]

Māori sales of the surrounding lands were reluctant and drawn-out. The final purchase made of the lands designated to be part of Tongariro National Park in the 1894 Act, was not made until 1903.[94] During the seven years between the signing of the deed of conveyance in 1887, and the *National Park Act* 1894, Alfred Newman, the Member of Parliament who first raised the suggestion of a national park in Parliament, continued to pester successive Premiers and Ministers of Lands for updates on the progress of acquisition. Replies were that the locals were reluctant to sell, or charged prices the government was unwilling to pay. A clause allowing land to be compulsorily taken with compensation, under the *Public Works Act* 1882, was included in the third Tongariro National Park bill, and the act was passed in that form in 1894. The clause does not appear to have ever been invoked, although the threat of confiscation may have been used as a tool in the purchase dealings.

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[90] Nigel Coventry, "Tongariro: The Gift of Fire," *Pacific Way* 3(1987): 65.
[91] Sir Hepi Te Heuheu, foreword to Potton, *Tongariro: A Sacred Gift*, 8.
[92] Richard Boast, *Generic Submissions Relating to the 'Gift' of the Peaks and the establishment of Tongariro National Park*, Wai 1130, #3.3.23, May 15, 2007, paragraphs 1.2-1.3, 3.
[93] Bruce Stirling, *Taupo-Kaingaroa 19th Century Overview Project* vol. 2, Wai 1200, #A71, (Crown Forestry Rental Trust, 2004), 819, 836, 841-2; Joel, *The Origins of the Gift of the Peaks,* 96-113.
[94] Boast, *Buying the Land, Selling the Land*, 352.

Hone Heke Ngapua, the Member of Parliament for Northern Maori,[95] denounced the 1894 Bill in the House:

> [H]e wished also to mention that, in regard to the interests which were held by some of the Natives at the present time, he did not at all like the idea of the Government obtaining those interests by force from the Natives by having a valuation made, and taking their land away altogether. When the Natives did not wish to dispose of their interests they should have the opportunity of making a bargain with the Native Minister or the Minister of Lands in reference to their interests. He believed the Natives who still had interests in the land about there were willing to dispose of them for a certain price. To provide for taking the land away from the Natives under the clauses set forth in the Bill was a monstrous piece of legislation. He did not believe in taking Native land at a valuation, especially if the Natives did not agree to such valuation. Legislation of this nature was entirely inconsistent with the Treaty of Waitangi.[96]

The Bill passed into law despite such protests. Te Herekiekie, an important Tūwharetoa chief, petitioned against the Act in 1895, but as it was already law, the Native Affairs Committee deemed his protest too late.[97]

The 1894 Act did not fully formalise the Tongariro National Park. The Act designated the area for future proclamation, once all the desired land belonged to the Crown. At 1894 not all that land had been purchased. On the 29th of August, 1907, 'more or less' 25,212 hectares (of land surrounding the mountains, excluding the Ketetahi Springs which the Crown had not been able to buy, was declared to be vested in the British King.[98] According to the provisions of the 1894 Act the declaration should have followed as soon as all the land in the proposed park area had been purchased. There had been no purchases in the four years prior to 1907, and the actual impetus for declaration seems to have come from an inquiry by the head of the new Department of Tourist and Health Resorts into when the park had been declared, alerting the Under-Secretary of Lands to the fact that it had not been declared at all.[99]

Richard Boast has observed that "[p]erhaps the rather untidy reality of what actually happened from 1887 to 1903 is less significant than what the National Park has come to

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[95] The Maori Representation Act 1867 gave Maori men universal suffrage and set up four Maori seats in parliament, covering the country in four large electoral blocks labelled the Northern, Eastern, Western and Southern Maori seats.
[96] NZPD, 11 October 1894, vol. 86, 679.
[97] Kingi Te Herekiekie petition, no. 653/1895, *AJHR*, 1895, I-3, 2.
[98] *New Zealand Gazette*, August 29, 1907, 2677.
[99] General Manager of THR to Under-Secretary of Lands, 24 June 1907, L&S 4/362, box 0060 1502, DOC, Wellington.

symbolise."[100] What the gift has come to symbolise has been challenged in the course of the National Park inquiry. The second part of this chapter considers the way the 'gift' was debated in the hearings of the Waitangi Tribunal.

The Inquiry and the 'Gift'

Almost every aspect of the 'gift' was contested in the inquiry. Some claimants contended that Tūwharetoa had no right to claim exclusive ownership of the mountains, and that the government deliberately ignored the interests of other groups. Some groups within Tūwharetoa challenged the right of Te Heuheu to have been given the sole title of the mountain peaks, or to have given it away to the Crown. Others of Ngāti Tūwharetoa questioned the fairness of the transaction and the negotiations before it. Did Te Heuheu understand the nature of the deed? Was he led to believe that his name would sit alongside Queen Victoria's as trustees of the future park? Was he coerced into signing in the first place under threat of further punishment for his involvement with Te Kooti in the wars? Did he understand what a national park would entail, particularly the idea of visitors using the mountains for recreation? Claimants questioned the government's motives in acquiring a national park and whether those motives were worthy. Was the park created for conservation or tourism? Did government officials deliberately target Te Heuheu to the exclusion of other chiefs and other tribes with rights in the area in order to obtain the mountains more easily?

The angles taken on these questions were voiced in statements of claim, at the beginning of the inquiry, in submissions and cross-examination during the inquiry, and in closing submissions at the end. The positions taken by various parties, and the way they have changed, provide a good example of the way that the Tribunal functions as a 'site of memory.' Over the course of the inquiry, positions were honed to fit more precisely into the format required to produce a favourable report.

Early positions on these issues were heralded in the *Statement of Issues*, a document prepared by Tribunal members at the judicial conferences prior to the first hearings. The *Statement of Issues* is supposed to assemble the relevant questions to be researched in the inquiry process and the Crown response to the *Statement of Issues* is a place where the Crown can concede or deny points of claim. In theory this process isolates the points of contention to be focused on in the inquiry process. In practice the processes of

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[100] Boast, *Buying the Land, Selling the Land*, 343.

research and submission usually raise further points and render others unimportant, but many issues identified do become major points of contention in the inquiry. The December 2005 *Statement of Issues* for the National Park inquiry laid out the claimants' contentions – that the Crown did not consult with all the right people or at proper length when formulating their plan for a national park.[101] Whanganui Māori claimed that the Crown "dismissed or wilfully ignored" their customary interests in the park, and several claims put it that Te Heuheu was negotiated with to the exclusion of other important chiefs.[102] They also claimed that the Crown "failed or refused to understand" their intentions regarding the transaction, and took advantage of them at a vulnerable point in their past.[103]

In response, the Crown team conceded some points, often relating to misunderstandings of Māori cultural traditions. They argued that the adequacy of consultation over the 'gift' and the involvement or exclusion of Whanganui Māori were issues to be investigated in the claim, as were the "…understandings of the parties, the circumstances and terms of the 'gift,' and how it was implemented…"[104] Among other things the Crown denied that it isolated Te Heuheu for negotiations, and gave a preliminary view that most of Ngāti Tūwharetoa had agreed to allow Te Heuheu to 'gift' the peak blocks.[105]

Further research and the commencement of hearings emphasised these positions, and raised some new issues. One of the points of difference that appeared between the research reports of the Crown and claimant historians was the motivations of the Crown in establishing a national park. The main 'claimant historian' (funded by the Crown Forestry Rental Trust),[106] Robyn Anderson, emphasised the Crown's commercial interests in a national park – Anderson argued that the motivations to form a park were tied to the Crown's desire to open up the central North Island to settlement and tourism.[107] It should be noted, however, that Brad Coombes, another historian funded by the Crown Forestry Rental Trust, argued in his report on tourism in the national park

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[101] Statement of Issues for the Tongariro National Park District Inquiry, Wai 1130, #1.4.2, 2005, 55.
[102] Ibid., 57.
[103] Ibid., 55.
[104] Ibid., 63.
[105] Ibid., 63-4.
[106] The Crown Forestry Rental Trust is a trust fund that comes from Annual Rental Fees for licences on the use of Crown forest lands which have been identified as having potential for return to Māori ownership as part of Treaty settlement deals. Until the beneficial owners of the lands have been determined, the Trust invests the rental proceeds and spends the interest on helping Māori claimants prepare, present and negotiate claims that involve or could involve the lands held in trust.
[107] Anderson, *Tongariro National Park*, 41.

that "[tourism's] role in the establishment of the park was often indirect, subtle, and difficult to prove," and "…cannot be disassociated from other motivations…"[108] Andrew Joel, the Crown historian charged with writing a report specifically on the creation of the national park, argued that the Crown's prevailing motivation was to secure public ownership of the mountains to protect them from exploitation and make them available to the public.[109]

One claimant submission was also particularly influential in the development of debate around the 'gift' – that of Chris Winitana, a tutor of the Wānanga o Tūwharetoa, a traditional learning institution. He argued that in the worldview of Horonuku Te Heuheu, it would not have been imaginable to completely cede his authority and connection to the mountains.[110] They were far too closely bound to his mana and identity, and in any case, the concept of a *tukunga* (the word used in the deed to designate 'gift') was not an unconditional transfer of property as in the Western legal sense of a gift. Winitana explained that in the customs of Tūwharetoa a tukunga implied ongoing obligations, and was used to establish or cement allegiances between groups.[111]

The closing submissions are the final and most finely-honed positions of each party. The claimant submissions were very respectful of each other. The Ngāti Rangi submission referred to the gift as a matter best left to Tūwharetoa for interpretation. They emphasised that the important issue to them is that "…the Crown did not, at any time before, during or immediately after entering into an agreement with Te Heuheu Tukino, give proper regard to the interests of other groups in the lands subject to inclusion in the Park."[112] Their grievance was directly squared at the Crown – Te Heuheu's rôle in their exclusion, for example, was not a matter for claim. Three hapū of Tūwharetoa opposed the gift when it was made; these hapū, in their submissions, continue to voice their opposition, but are even more careful to emphasise that their grievance is against the Crown, rather than Te Heuheu. The closing submissions for Ngāti Waewae specify that:

> In making their claims the Claimants underscore that the prominence and rank of Te Heuheu line is unquestionable. The Claimants do not wish to

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[108] Coombes, *Tourism Development,* 457-8.
[109] Joel, *The Origins of the Gift,* paragraphs 11-28, 8-14.
[110] Brief of Evidence of Chris Tāmihana Winitana, Wai 1130, #G25, September 23, 2006, paragraph 17, 4, also paragraph 29, 6.
[111] Ibid., paragraphs 36-40, 8-10.
[112] Closing Submissions on Behalf of Ngāti Rangi, Wai 1130, #3.3.33, May 15, 2007, paragraph 6.5, 37.

> impugn the actions of their Ariki [paramount chief] in any way, but rather their claims are focused on the activities of the Crown.[113]

The point to be made here is that the closing submissions intend both to persuade the Tribunal to write a report favourable to their position, and to place themselves in a good starting position for negotiations. The role of Horonuku Te Heuheu escaped any interrogation in the closing submissions partly because there was no gain to be made from criticising him, because there were incentives in presenting a united claimant front to the Tribunal.

The Crown submissions stated their belief that the 'gift' was the central and pivotal issue in the National Park inquiry, and devoted a chapter to discussing it.[114] They admitted culpability for failing to honour the specific terms laid out by Horonuku in his letter, and acknowledged the breach of the Treaty caused by their failure to consult with Whanganui Māori, saying that the Whanganui connection to the mountains "…was, or ought to have been, known to the Crown…"[115] They emphasised a beneficial agreement with Te Heuheu: "…it appears that Te Heuheu's desire to protect the tapu nature of the mountains coincided with the Crown's recognition that they were a special place that ought to be set aside for the benefit of the Nation."[116] The Crown lawyers argued that Horonuku entered into this agreement willingly, understanding that he was "releasing giving over or gifting the mountains into a new kind of protective arrangement, under the mana of the Crown or the Queen."[117] They emphasised the noble motivations behind the creation of the national park and elided the changes in park management over time, suggesting that the current purposes of national parks in New Zealand, as outlined in the *National Parks Act* 1980, "appear entirely consistent" with the motivations of Crown officials in the 1880s.[118] The following two chapters show that there was in fact substantial change in the concept and purpose of national parks over the years.

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[113] Closing Submissions of Counsel for Ngāti Waewae, Wai 1130, #3.3.41, May 28, 2007, paragraph 186, 62. Ngāti Waewae are a group closely affiliated to Tūwharetoa, though they have been based in the Manawatū since the time of Mananui (i.e. since sometime before 1846).

[114] Closing submissions of the Crown, Wai 1130, "Chapter One: Introduction," paragraph 41, 14; "Chapter Six: Nga Kahui Maunga: The Gift and Creation of the Park."

[115] Closing submissions of the Crown, Wai 1130, "Chapter Six," paragraph 5, 4; paragraph 13, 6.

[116] Ibid., paragraph 3, 3-4.

[117] Ibid., paragraph 52, 18.

[118] Ibid., paragraphs 61-2, 20. The National Parks Act 1980 states that National Parks exist "for the purpose of preserving in perpetuity as national parks, for their intrinsic worth and for the benefit, use, and enjoyment of the public, areas of New Zealand that contain scenery of such distinctive quality, ecological systems, or natural features so beautiful, unique or scientifically important that their preservation is in the national interest" and "…the public shall have freedom of entry and access to the parks, so that they may receive in full measure the inspiration, enjoyment, recreation, and other benefits that may be derived from

The closing submissions of Ngāti Tūwharetoa also devote a chapter to the gift. It begins with this opening statement:

> The romantic tale of the 'Noble Gift' has ingrained itself into the history of this country, and indeed in Ngati Tuwharetoa's history, although privately Ngati Tuwharetoa have always acknowledged that the 'Gift' is a myth that obscures the real, more painful truth. This Tribunal inquiry is in itself making history as the first time that Ngati Tuwharetoa have decided to set aside the mythologizing and say publicly 'it was not a gift'.[119]

The submissions go on to outline a transaction which could not be described as amounting to an agreement, given the cultural chasm between participants.[120] They argue the Crown intended to secure ownership of the park, and deny any motivation of "conservation-minded objectives," instead emphasising the Crown's tourism designs for the park.[121] The submissions argue that it is "plausible" that the Crown persuaded Te Heuheu to sign the deed by playing to his anxiety to protect the tapu of the mountains, and claim he was subject to "skilful manipulation."[122] The Tūwharetoa closing submissions represent the 'gift' as if it were itself a kind of Treaty, arguing that it set up conditions that the Government was required to uphold: an equal partnership between Te Heuheu and the Queen in the protection of the mountains; the pledge to "hold the mountains inviolate for the nation"; the removal and entombment of Horonuku's father's body; and the appointment of Horonuku's son as kaitiaki after Horonuku's death.[123] The closing submissions outline the ways in which these conditions were not honoured, and make demands for compensation resulting from these breaches of contract.

The debates over the 'gift' illustrate the ways in which the Tribunal process encourages particular narratives of Crown-Māori relations, in which the two parties are in opposition; the Crown is a strong, malevolent and devious force, and Māori are active, but ultimately victimised agents in their historical interaction. This characterisation of the relationship affected the portrayals of Crown and Māori agents' motivations in the lead-up and aftermath of the 'gift.' Horonuku's position as a victim of Crown manipulation is emphasised in claimant submissions, and his possible motivation to secure his mana over the mountains is barely acknowledged, even by claimant groups

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mountains, forests, sounds, seacoasts, lakes, rivers, and other natural features." S4(1)-(2)(e). It is clear, however, that "ecological systems" were certainly not protected by the Tongariro National Park Act 1894.

[119] Closing Submissions of Ngati Tuwharetoa, #3.3.43, paragraph 7.1, 100.

[120] Ibid., paragraph 7.16, 105.

[121] Ibid., paragraphs 7.17-7.24, 106-8.

[122] Ibid., paragraphs 7.102- 7.105, 132.

[123] Ibid., paragraphs 8.18.1-8.18.4, 168.

whose ancestors' claims were thus overridden. Crown submissions, on the other hand, emphasise the noble goals to conserve the mountains and their wildlife for the benefit of all New Zealand citizens, and gloss over the motivations to secure a valuable tourism asset.

Chapter Six: Building the National Park 'Island,' 1907-1970

During the period 1907-1970 the national park concept grew into the form we recognise today, where native plants and animals are protected, exotic plants and animals are controlled or eliminated, infrastructural development is limited, and the use of the parks for recreation is encouraged. The settler government made its laws and policies without much reference, let alone deference, to Māori interests in these years. Although the Māori parliamentarians made their voices heard as conservation legislation came up for debate, it is clear from the archival sources that Māori issues and interests were not given serious consideration by most politicians and bureaucrats. Environmental and recreational groups, on the other hand, had a strong influence on the way the national park institution developed. The Pākehā 'island' was formed and reinforced in these years.

By the turn of the century the upheavals of warfare and epidemic disease were largely over, and Māori were well outnumbered by Pākehā. The last area of real Māori self-determination, the King Country, had been opened up to Pākehā settlement. This is not to say that nothing was happening in Māori politics and affairs. Ranginui Walker argues that this period constituted a cultural revival, which was caused by demographic recovery, and went unnoticed by Pākehā due to the separateness of the two peoples for much of this period.[1] The relative separateness of Māori and Pākehā lives and politics in this period is something other writers have also noted. James Belich has labelled policy in the first half of the twentieth century "benign segregation," pointing out that Māori had separate "military, religious, sporting, welfare, land development, educational and cultural organisations."[2]

The beginning of the twentieth century was an important time in the development of today's conservation estate. David Thom, author of the 1987 centennial publication on the history of New Zealand's national parks, argued that:

> From an historical perspective, the period 1901 to 1920 was truly remarkable. A dawning consciousness of scenic values, the urging of the preservation societies, sadness, even revulsion at mindless forest

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[1] Walker, *Ka Whawhai Tonu Matou, Struggle without End*, 186.
[2] James Belich, *Paradise Reforged: A History of the New Zealanders from the 1880s to the Year 2000* (Auckland: Allen Lane, The Penguin Press, 2001), 206.

> destruction, and the imperious driving force of Harry Ell combined to invent the mechanism represented in the Scenery Preservation Board.[3]

This "dawning consciousness of scenic values," happened, for a handful of settlers, at least two decades earlier than for the rest of the public. These early conservationists set up Scenery Preservation Societies in several regions of New Zealand. The aforementioned Harry Ell was a forceful member of this early group, and was the key player behind the *Scenery Preservation Act*, passed in 1903.[4] This Act allowed for the compulsory acquisition of land deemed to be in the national interest and set up the Scenery Preservation Board – a five person commission to inspect lands and recommend places that 'should be permanently reserved as either scenic, thermal, or historic reserves.' Section 4 allowed land to be taken compulsorily under section 5 of the *Public Works Act* 1894.

There were protests from Māori as these events unfolded. Several petitions were sent by Māori to Parliament, complaining that their resource rights were being taken away. Āpirana Ngata and other Māori Members of Parliament complained that Māori had not been sufficiently consulted in the matters of the Act.[5] These complaints did lead to change – the provision in the *Scenic Reserves Act* to compulsorily acquire Māori land was revoked, and in the first nine years of the Act's use, little Māori land was taken for scenic reserves.[6]

By 1919 there were 516 scenic reserves, taking up 124,193 hectares of New Zealand land. National parks added another 669,446 hectares to the early conservation estate.[7] This early network of national parks and scenic reserves were, as Thom puts it, the 'nuclei' of today's national park system.[8] At that stage the motivation for making reserves was mainly to preserve scenic values, but it was also becoming important to some that these reserves were native forests and the habitat of native birds. David Young argues that 1914 marked a significant shift in attitudes to the environment, from

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[3] David Thom, *Heritage: The Parks of the People* (Auckland: Lansdowne Press, 1987), 124.
[4] Ibid., 114.
[5] Park, *Effective Exclusion? An Exploratory Overview of Crown Actions and Maori Responses Concerning the Indigenous Flora and Fauna, 1912-1983*, 155.
[6] Ibid., 256-257, 259.
[7] Michael Roche, "The State as Conservationist, 1920-60: 'Wise Use' of Forests, Lands and Water," in *Environmental Histories of New Zealand*, ed. Eric Pawson and Tom Brooking (Melbourne: Oxford University Press, 2002), 185.
[8] Egmont National Park had been created in 1900, Arthur's Pass Reserves in 1901, large reserves 'for national parks purposes" had been set aside in Fiordland in 1905. A reserve in Routeburn Valley created in 1911 later became part of Mt Aspiring National Park, and reserves at Lakes Rotoiti and Rotoroa in 1912 became the future Nelson Lakes National Park. Murchison Valley was added to Mt Cook reserves in 1917 and the 100 hectare nucleus of Abel Tasman National Park was established in 1918. Thom, *Heritage*, 124.

scenery protection as the main objective of reservation, to a concern for protection of wildlife.[9] The first New Zealand Forest and Bird Protection Society was formed in that year, by Harry Ell. Two years later the New Zealand Forestry League was set up, an organisation more concerned with preserving the supply of timber into future generations, than with preserving the forest and the wildlife within it, but the two organisations had much in common and worked closely together in their early years. The Forestry League campaigned for the establishment of a Forest Service, which was established in 1919. The Forest and Bird Protection Society lasted only five years, but a new Native Bird Protection Society was established in 1923, with Thomas Mackenzie as president, and Ernest Valentine Sanderson as honorary secretary.[10] The Native Bird Protection Society was re-named the Royal Forest and Bird Protection Society in 1935.

The 1920s and 30s saw the first attempts to define the purpose of scenery protection reserves and to develop a philosophy for their management. The *Public Reserves, Domains and National Parks Act* was passed in 1928, and although the debate did not produce a precise definition for a national park, it showed a growing concern with the 'depredations' of visitors, and some speakers mentioned the value of national parks as preservation areas for native birds and animals.[11] This reflected growing concerns in wider society. Cars were becoming more widely owned, and this brought more visitors to reserves. Mountain sports such as skiing also became popular in these years, and in 1931 the many mountain clubs linked to create the Federated Mountain Clubs, which became an important lobby group. It was becoming obvious to the increasing numbers of park visitors that the condition of the parks was deteriorating.[12] In the years of the Depression the little money being spent on park management almost dried up altogether. Despite this, the amount of land being reserved for parks increased, creating greater and more visible management problems. The impact of deer on new forest growth was becoming well-recognised, as were the links between forest degradation and flooding.[13]

The new advocacy groups worked together to publicise these issues through the 1930s and 40s and to propagate the idea that national parks were sanctuaries for native plants and animals as well as recreation grounds for people. They had a friend and supporter in

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[9] Young, *Our Islands, Our Selves*, 133.
[10] Ibid., 115-7.
[11] Ibid., 135-6.
[12] Park, *Effective Exclusion?*, 270.
[13] Thom, *Heritage*, 138-40.

the chief clerk of the Department of Lands and Survey, Ron Cooper. Cooper was the architect of the *National Parks Act* 1952, which was not only the first Act to co-ordinate the management of the national parks across the country, but was the first Act to define a purpose for national parks:

> …the provisions of this Act shall have effect for the purpose of preserving in perpetuity as National Parks, for the benefit and enjoyment of the public, areas of New Zealand that contain scenery of such distinctive quality or natural features so beautiful or unique that their preservation is in the national interest.[14]

The Act also stipulated that parks should be preserved, as far as possible, in their 'natural state' as soil and water conservation areas, and that native plants and animals should be protected and introduced plants and animals exterminated. Public access, subject to the conditions necessary for the preservation of plants and animals, should be provided for, so that people could:

> …receive in full measure the inspiration, enjoyment, recreation, and other benefits that may be derived from mountains, forests, sounds, lakes, and rivers.[15]

There was a substantial degree of accord over the 1952 legislation; the parliamentary debates record nothing but praise for the Bill from both parties in Parliament.[16] The Act also set up a National Parks Authority to which the separate park boards had to report. The Royal Society, the Forest and Bird Protection Society and the Federated Mountain Clubs all gained a seat on this authority, alongside bureaucrats from the Lands, Internal Affairs, Forestry and Tourist and Health Resorts Departments.[17] Apart from reaffirming the statutory position of a Te Heuheu descendant on the Tongariro National Park board, the Act said nothing about Māori representation. The Act also stipulated that parks be preserved in their natural state, but this apparently did not extend to infrastructure for recreational and electricity generation purposes, because the following years saw substantial development in these areas at Tongariro.

The 1960s saw a significant change in wider public attitudes towards the environment. Environmental historian Michael Roche argues that it was around this time "when a belief in superabundant resources gave way to concerns about rates of exploitation and

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[14] *National Parks Act* 1952, s3(1).
[15] Ibid., s3(2)(a)-(d).
[16] NZPD vol. 297, 1952, 712-25, 763-81.
[17] *National Parks Act* 1952, s4(1)(a)-(i).

the possibility of resource exhaustion."[18] There was a better understanding of erosion and soil and water conservation, and increasing emphasis on the importance of protecting native species.[19] David Young says that by the end of the 1960s conservation had become a major social force. These ideas were to burst forth in dramatic protests against environmental degradation in the 1970s.

Another important theme of this period, alongside the development of the national park institution, and the growth of the conservation movement, was the attachment that Pākehā New Zealanders developed towards national parks in these years. The increasing number of people with cars meant increasing numbers of visitors to national parks, and mountain clubs built tracks to accommodate their journeys. Skiing became a popular sport and drew people to the mountains. The idea of these places as "parks for the people," areas accessible to everyone for rest and recreation, took hold in these years. "Parks for the people" became the key principle of the Federated Mountain Clubs.[20] Recreation enthusiasts and environmental lobbyists were influential groups in the development of national parks, in these years, where Māori were increasingly absent voices.

Tongariro 1907-1970

Tongariro was not a major site or subject of relationships during the period 1907-1970. Its race-relations history during these years was characterised by the near absence of Māori involvement, with the exception of a few memorialising moments relating to the original 'gift,' and the government's repeated attempts to purchase the Ketetahi Springs, which remained in Tūwharetoa ownership. This period received less attention in the Tribunal process than the previous and subsequent periods, which involved more interaction between the government and Māori.

The statutory provision for a Te Heuheu seat on the national park board provided only a very limited level of representation, the board itself was disestablished for several years in the early twentieth century, and it was largely due to the advocacy of Tureiti Te Heuheu that a seat was provided for when the board was re-established. The level of decision-making power this position offered was diluted over the years by the addition

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[18] Roche, "The State as Conservationist," 183.
[19] Young, *Our Islands, Our Selves,* 140.
[20] Thom, *Heritage,* 138, 142-3.

of new members to the park board, and it seems that the level of attendance by the Te Heuheu member was never very high.

Although most of the land in the area designated for Tongariro National Park had been purchased when the park was declared in 1907, there were some important exceptions. The owners of the Tongariro 1C block had refused to part with the Ketetahi Springs, so the Ketetahi block was sectioned out of the larger area and remained in Māori ownership, despite being completely surrounded by park land. Parts of the Okahukura 1 and 8M no.2 blocks crossed into the northern park boundary but had not been purchased from Māori. A block on the southern side of Ruapehu, now known as the Rangipō North 8 block, was not only unsold, but had not passed through the Native Land Court, and still remained in customary title.[21] This issue was raised several times in the years after the park was declared, but nothing was done to address it until the 1950s.

Until 1907, despite the existence of a Board of Trustees, there was almost no active management of the park. The four members of the Board of Trustees (The Minister of Lands, the Surveyor General, the Director of Geological Survey and Te Heuheu) did not meet in the thirteen years between the first *Tongariro National Park Act* and the park's declaration, and no staff appointments were made.[22] Three more members were added to the original four-man Board in 1907: the Under-Secretary of Lands, the General Manager of the Tourist and Health Resorts Department, and the Commissioner for Crown Lands.[23] This board met infrequently, and, it seems, did little. In 1908 the General Manager of Tourist and Health Resorts, Thomas Donne, wrote to the then chairman of the board that "[i]t seems to me that practically nothing is being done to develop this magnificent national asset."[24] There were no meetings between 1908 and 1912.[25]

The one important undertaking in these early years was a survey of Tongariro. In 1907 Leonard Cockayne, a botanist and leader of the early conservation movement in New Zealand, was commissioned with another scientist, Edward Phillips-Turner, to carry out a survey of the newly-declared national park. Phillips Turner was instructed to meet

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[21] See Appendix D: Map of the Inquiry District.
[22] Coombes, *Tourism Development*, 133.
[23] The original board, as outlined in section 4 of the *Tongariro National Park Act* 1894 consisted of the Minister of Lands, the Surveyor General, the Director of Geological Survey, "...Te Heuheu Tukino the younger [Tureiti]... and such other persons as the Governor shall appoint."
[24] General Manager of THR to R. McNab, Chairman of the Tongariro National Park Board, 9 October1908, TO 1/70 1908/1909 part 1, National Archives.
[25] J Strauchon, Under-Secretary of Lands, to Minister of Lands, 27 August 1912, ABWN 7609 w5021/825 22922 part 1, National Archives.

with Tureiti Te Heuheu and explain the process to him at the time of this survey.[26] He was also encouraged to involve local Māori in the project.[27] They carried out the survey in 1908, and their report the same year recommended doubling the size of Tongariro to include forest lands, and emphasised the importance of native plants and animals as a key feature of a reserve, noting that at the time Tongariro was almost treeless. Cockayne and Phillips-Turner also noted of the Ketetahi Springs:

> We do not offer any suggestions, but merely refer to the matter of Ketetahi since, for obvious reasons, it may finally become a place of prime importance.[28]

The report was widely circulated and reported upon, and one of the historians involved in the National Park inquiry described it as serving as "a blueprint for future development."[29]

In 1914 the Board of Trustees was disestablished, and responsibility for the park transferred to the Department for Tourist and Health Resorts (THR).[30] In the discussion between ministers and bureaucrats from THR and the Lands Department, the then General Manager of Tourist and Health Resorts, G. M. Wilson, reminded his minister that "…legislation would be necessary, and there may be other difficulties in the way of removing the control from the present trustees, as the original reserve was ceded to the Crown by deed of gift made by the late Te Heuheu, Tukino."[31] Despite this reminder, the board was disestablished in what was referred to as a "washing-up bill," in which many 'small' and disparate changes are made at once. This bill was criticised by some speakers for passing measures without proper debate.[32]

At the time there appears to have been no protest in or outside of Parliament House regarding the disestablishment of the board, and with it the position of Tureiti Te Heuheu, Horonuku's son. The succession of Tureiti to this position was one of the two specific requests Horonuku made at the time of the conveyance. Six years later,

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[26] Cecilia Edwards, *Tongariro National Park: The Legislative Regime and Park Management 1894-1952*, Wai 1130 #A53, (Wellington: commissioned by the Crown Law Office, 2005), 20-1.
[27] Ibid., 19.
[28] Leonard Cockayne and E. Phillips-Turner, *Report on a Botanical Survey of Tongariro National Park,* (Wellington: J. Mackay, Government Printer, 1908).
[29] Anderson, *Tongariro National Park*, 124.
[30] The *Reserves and Other Lands Disposal and Public Bodies Empowering Act,* in its brief 54th section, disestablished the park board and transferred control of the Park to the Department of Tourist and Health Resorts. In the same section of the act the Governor was authorised to proclaim adjacent Crown land as part of the park (before this time there had been no mechanism for enlarging the park).
[31] General Manager of THR to Minister of THR, 12 May 1913, TO 1/70 1908/1909 part 2, National Archives.
[32] Coombes, *Tourism Development,* 150.

however, Tureiti Te Heuheu, by then a member of the Legislative Council,[33] arrived at the office of the Minister of Tourist and Health Resorts, William Nosworthy. The translator Captain Vercoe mediated their conversation, and an unknown note-taker recorded it. The remaining record raises a number of issues, among them the question of whether or not Tureiti understood that the original conveyance had transferred the ownership of the mountain peaks to the Crown:

> When I heard that [his "name had been struck off" the board], of course I felt very grieved over it / My reason for being so grieved about the matter was that I am the only one in the Title to the Land. It was the wish of the then Minister in power that the name of the Sovereign should be included along with my name in the Title to the land. This is what I want to get at. As you are the Minister-in-Charge of Tourist Resorts, I want you to have my name put back on – as one of the governing people in connection with that Park, and I want you to see that the Act of 1914 is either adjusted or struck out.[34]

It seems that Tureiti wanted to be informed about the happenings in the park, but not to have management responsibilities himself:

> Captain Vercoe: "His [Tureiti's] point Sir is this: he does not in any way wish to take an active part in the conduct or control of the National Park. All he wants is the right of his Father, and his Father before him to that land – in his name".
>
> Hon Mr. Nosworthy: "He wants his name perpetuated alongside of the ruling Monarch of the Empire, as Trustee in joint with the Sovereign? He wants to be honorary trustee of the National Park?"
>
> Captain Vercoe: "That is just it. He does not want the name of his father or his own name lost in connection with the thing."
>
> Hon Tukino: "If the governing body should at any time be operating in connection with the Reserve, I would like to know what is going on around there in the interests of myself and my people."
>
> Hon. Mr Nosworthy: "I will let him have a record of what is being done."
>
> Hon Tukino: "My reason for making this request is that I may be of considerable assistance to you, because if my people understand the position they would perhaps be of assistance to those officers of your Department who would be operating there, instead of being detrimental."[35]

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[33] The upper house of Parliament, which was abolished in 1951. Since then the New Zealand legislature has been unicameral.
[34] Notes from an interview between The Hon. Te Heuheu Tukino, M.L.C, and The Hon W. Nosworthy, Minister of Tourist and Health Resorts, Wellington, 13 November 1922. TO 1 52/54 1920-1954, National Archives.
[35] Ibid.

It is also clear that Nosworthy had very little idea of the history and even the contemporary administration of the park, as the following exchange with the translator shows:

> Hon. Mr Nosworthy [to Captain Vercoe]: "Does he just want to get back on to the Board of Trustees? Would he be satisfied with that?"
>
> Captain Vercoe: "Is there such a thing as a Board of Trustees in existence – was it not washed out by the Act of 1914?" I think you will find that that is so."
>
> Hon Mr Nosworthy: "I will look into it."[36]

Tureiti made it clear to the Minister that he would pursue the matter if it was not followed up:

> Hon. Tukino: I want to tell you that I shall not cease being active in connection with this matter; if my name is not shown as one of the Trustees I shall certainly take steps and will continue to take steps to have my right asserted. I want you to understand that I would not consider money in any shape or form in connection with this matter. The prestige of my people depends upon our holding those Mountains for all time, or an interest in them; and money is nothing. If you gave me a million pounds tomorrow, I would not give the prestige which is contained in those Mountains. It is my mana. My grandfather's bones are resting on those places. That is all.[37]

Tureiti died in 1921. In 1922 a new *Tongariro National Park Act* was passed, partly to enact the extensions recommended fourteen years before by Cockayne and Phillips-Turner, and partly to reinstate a national park board. Calls for a board had been made throughout the later years of management by the Tourist and Health Resorts Department, by interests ranging from mountain club members to the Auckland mayor.[38] Tureiti's complaints were also taken into account in the reestablishment of a Board, and a Te Heuheu seat was provided for in the legislation, which was taken up by Tureiti's son Hoani Te Heuheu Tūkino VI (Hoani).[39] The new board was comprised of thirteen members.[40]

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[36] Ibid.
[37] Ibid.
[38] Honorary Secretary of the Ruapehu Ski Club to Minister of THR, 2 November 1920, L&S 4/362, box 0060 984, DOC, Wellington; J Gunson, Auckland Mayor, to Prime Minister, 7 November 1921, TO 1 152/45/2/ part 1, National Archives.
[39] General Manager THR to Minister for THR, 19 June 1922, TO 1/70 52/54, National Archives.
[40] The Minister of Lands, a descendent of Te Heuheu Tukino, the Mayor of Auckland, the Mayor of Wellington, the Warden of the Park, the Under-Secretary of Lands, the General Manager of the Tourism Department, Secretary of the Forest Service, President of the New Zealand Institute and "not more than four" others appointed by the Governor-General in Council. The first of these were W. Field, an MP, T. Blyth from the Ohakune Chamber of Commerce, W. Salt, an executive member of the Ruapehu ski club, and A. Simpson from Hunterville.

An important figure in the early years (from 1914 until the mid 1920s) was John Cullen, who was appointed as Honorary Ranger while still serving as Police Commissioner, and continuing in this role after his retirement in 1916.[41] In the absence of strong management from the Department of Tourist and Health Resorts, Cullen set about fulfilling his own vision for Tongariro, as a game resort where hunters could come to shoot birds such as grouse, blackcock and ptarmigan.[42] He was politically well-connected and obtained permission, sometimes directly from the Prime Minister, to release various exotic plants and animals into the park.

In 1920, Leonard Cockayne was asked to comment on one of Cullen's applications to establish an exotic plant in the park.[43] Cockayne not only opposed the application but raised the issue with the New Zealand Institute, which became a lobbyist against further introductions at Tongariro.[44] Other public submissions followed. The Tongariro National Park board debated the issue in 1924, and a vote was taken. It was voted seven to four that no more exotic introductions should be made to Tongariro National Park. Hoani was one of those who voted to ban further introductions.[45]

It is hard to know how much disruption there was to Māori use of the mountains in these years, or what they thought of the management of the park. In the very first years of the century there was some exchange between S. Percy Smith, the Surveyor General, and Tureiti Te Heuheu about the establishment of huts on the mountains, and other service provision for tourists to the Ketetahi Springs, though nothing seems to have come . It's clear from these early letters that Tureiti's opinion was considered important in the decision making process.[46]

Māori involvement decreased over the years. Researchers for the National Park inquiry chronicle the steady watering-down of the Māori position on the board, from the initial

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[41] Cullen was the Police Commissioner between 1912 and 1916. He was a strict disciplinarian, and played a controversial role in the violence around industrial disputes during his time as Commissioner. He also led the 1916 charge into Maungapohatu to arrest the Tūhoe prophet leader Rua Kenana, during which two Māori men were killed. See Richard S. Hill, "Cullen, John 1850? - 1939," *Dictionary of New Zealand Biography*(updated 22 June 2007), http://www.dnzb.govt.nz/.

[42] John Cullen to Minister of Justice, 18 May 1914, TO 1 52/15 part 1, National Archives.

[43] Leonard Cockayne to the General Manager of THR, 9 January 1920, TO 1 52/15 part 1, National Archives.

[44] The New Zealand Institute was established in 1867 to coordinate and publish the works of regional science and research organisations. In 1933 its name was changed to the Royal Society of New Zealand.

[45] Report of a meeting of the Tongariro National Park Board held in Waimarino on 24 February 1925, TO 1 52/59/1 part 1, National Archives.

[46] For example 'Notes on the Waihohonu Hut' TNP 16/4, Tongariro-Taupō Archives; Written notes on G T Murray to Surveyor General, 13 November 1900, TO 1/26 1901/196, National Archives; Surveyor General to G T Murray, 17 November 1900, TO 1/26 1901/196, National Archives.

discussions of joint ownership, to a place as one of three trustees, to one of four, to one of seven, alongside other 'interest groups' such as the mountain climbers and skiiers.[47] For some reason (and there has been a much speculation about possible reasons over the course of the claim), the attendance of the Te Heuheu board member over this period was never very high.[48] It is likely that Māori continued to hunt and gather food on the mountains, as there was very little policing of the area during most of these years.

The 1922 board marked the start of the active management of the park. Although the idea of a national park as a place in which native species should be protected and exotic species excluded was fairly well agreed upon by the mid 1920s, the idea of the park as a place in which man-made infrastructure should be limited was not. A large project in these years was the building of the large hotel known as the Chateau, at Whakapapa, on the slopes of Ruapehu. The board wanted to build a 'hostel' at Whakapapa, but lacked the funds to do so itself, so advertised for a private company to build it on leased land. The company that built the Chateau went into liquidation shortly after the foundation stone was laid in 1929. The Board took possession of the Chateau, but was unable to afford the extra costs and upkeep, so it was transferred to the Department of Tourist and Health Resorts in 1931.[49]

Aside from the Chateau, however, the board did not develop much infrastructure on the mountains during the 1920s and 1930s. Some roads and huts were built in and around the mountains, often using prison labour. Further huts were built by skiing, tramping, and mountain climbing clubs, under approval of the board. Skiing was becoming an increasingly popular activity, with the first ski tows built in the thirties.

A key area of interaction between the members of the park board and Tūwharetoa related to moments at which the board remembered, or was reminded of, their overdue obligation to create a memorial to Mananui Te Heuheu, as specified in Horonuku Te Heuheu's letter to the Minister of Native Affairs in 1887. The manager of the Chateau reminded the park board of this promise and when the Chateau was opened in 1929 a plaque commemorating the 'gift' was also unveiled. Whether deliberate or accidental, however, the commemoration was an acknowledgement of the actions of Horonuku, not

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[47] This process is described in two National Park inquiry research reports: Coombes, *Tourism Development*; Edwards, *Tongariro National Park.*

[48] Coombes suggests the fact the board was heavily dominated by Pākehā and/or the increasing frequency of board meetings in Wellington over the Depression years may have dissuaded Hoani from attending. Coombes, *Tourism Development,* 205. Edwards comments that it can be assumed Hoani Te Heuheu was very busy. Edwards, *Tongariro National Park,* 256.

[49] Under section 19 of the *Reserves and Other Lands Disposal Act* 1931.

a tomb for Mananui as the letter requested. In 1938 a deputation from Tūwharetoa, led by Hoani Te Heuheu, went to the park board to request that a memorial be made to Mananui. The chairman of the board found references to this promise in James Cowan's national park handbook, but could not locate the original documentation.[50] Despite this, the board made a commitment to organising the memorial, but action on the matter lapsed when war broke out in 1939. In the late 1940s the issue was raised again, the Te Heuheu board member (Hepi Te Heuheu Tūkino VII, the son of Hoani, who took over as chief when Hoani died in 1944) was asked to liaise with his people, and it was decided that a bust of Horonuku Te Heuheu would be the most appropriate form of memorial.[51] This was unveiled at a ceremony in 1953. A Tūwharetoa party was present and Hepi Te Heuheu gave a speech.

A lull in development during the Second World War was more than compensated for in the years directly following. New ski tows were built on Ruapehu and the Board held discussions regarding the establishment of a chairlift. It was decided, again, that delegating this to private enterprise would be the most efficient way of proceeding. An entrepreneur named Walter Haensli was granted a twenty-one year licence to operate chairlifts on the Ruapehu. The chairlifts went up at Whakapapa in the mid 1950s, and Haensli set up a company, Ruapehu Alpine Lifts, to run them. Other leases to competing operators followed. Ski tows went up at Tūroa, on the south-western slopes of Ruapehu, from the early 1960s.[52]

In all these developments, Māori were a lone or silent voice. Conservation and recreational groups, in contrast, were loud and active, and as a result national parks evolved as places where conservation and recreation interests were catered for, and conservation and recreation group representatives were well represented on decision-making bodies. It is hard to know why the Te Heuheu representatives attended infrequently, but it is easy to see that one seat on a board increasingly dominated by Pākehā interest groups provided little chance to make changes even if the consecutive board members had regularly attended. The other members of the board made little use of Hepi Te Heuheu even on questions where he might naturally be expected to have expertise, such as the Māori names for places in the park.[53] The interactions over the

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[50] Chairman of the Tongariro National Park Board to the General Manager, Department of Industries and Commerce, Tourist and Publicity,10 June 1938, TO 1/70 52/54, National Archives.
[51] Coombes, *Tourism Development,* 273. Sir Hepi Te Heuheu was knighted in 1979.
[52] Ibid., 267-8.
[53] Ibid., 262.

long-neglected promise of a tomb/memorial, and the intermittent attempts to lease or buy the Ketetahi Springs are the exceptions that prove the rule that Māori voices were not considered relevant to park management by the officials in control of park management. The written promise of a tomb was enough, though only barely, to ensure some contact over that issue, and the hard fact of Māori ownership of the springs provided another anchor for involvement. Without written promises or land titles, however, Māori interests and opinions were not sought or considered in these years. The park had become a Pākehā institution, or in Dening's metaphor, an 'island,' defined and run according to Pākehā rules.

The lack of interaction over park management is in contrast to the interactions over waterways between the government and Tūwharetoa, and the government and Whanganui. The dealings over Lake Taupō were the main concern in the relationship between the government and Ngāti Tūwharetoa, and the litigation over the Whanganui River was the defining issue in the government's relationship with the Whanganui tribes. The mountains, lake and river are all of great importance to the identity and culture of the local Māori, but the lake and river are critical to their lifestyle and livelihoods in a way the mountains are not. In another sense, although the mountains do not directly supply food and water in the way the lake and river do, both water bodies derive from the mountain waterways, and thus cannot be seen as entirely separate concerns. These ecological links were made very clear by the construction of the Tongariro Power Development (TPD) scheme in the 1960s and early 1970s.

The TPD is a large hydroelectric scheme drawing on waters from the eastern and western slopes of the mountains. It redirects the eastern waters first through two dams to the Rangipō Power Station, then to the Poutū dam where it meets the western diversion waters, which have also come through two dams. From the Poutū Dam the joined waters flow into the Tokaanu Power Station and out into Lake Taupō.[54] The level of the lake was raised when the TPD first began, which also increased the power generation of the preexisting hydroelectric power stations on the Waikato River. It also flooded a large amount of lakeside land, much of which was in Māori ownership. The levels of the smaller Lake Rotoaira, another lake of great importance to Tūwharetoa, were also

[54] There is a simple diagram of the scheme on the Te Ara website (a government-funded online New Zealand encyclopedia), http://www.teara.govt.nz/en/lakes/5/3. Some of the TPD's dams and lakes are marked on Appendix C: Map of Tongariro National Park.

raised by the scheme, and the headwaters of the Whanganui River, were diverted, dropping the flow of the river downstream.

Many individual claimant submissions addressed the effects of the TPD. The overwhelming narrative is one of loss, of the degradation of important waterways, the decline in wildlife, and the disappearance of special and sacred places. The large number of individual submissions on this issue reflects not only the relative recentness of the scheme's construction and the continuation of its effects, but the greater weight that has recently been attached to issues relating to waterways and living areas, in comparison to the issues of mountain lands.[55]

Tūwharetoa and the lake

In his report on the TPD, Tony Walzl found evidence that Tūwharetoa believed they had a special relationship with the government, begun with the gift of the parklands and cemented by their contribution of young men during the first and second world wars.[56] This idea of a special relationship is not widely noted among other writers, though some individual submissions expressed a sense of being *owed* by the government for the donations and uses of their resources over the years for public works such as the park, the deal regarding the lake, and the Tongariro Power Development scheme.[57]

The dealings over Lake Taupō were perhaps the most important in these years. Disputes over lake ownership in New Zealand have been complicated because of the convoluted British law relating to waterways. In the early colonial period there was no legislation to vest lake ownership in the Crown; however, as Ben White has argued in his report on lakes for the Waitangi Tribunal's Rangahaua Whānui project, the Crown nonetheless tended to assume ownership in its actions regarding the control of lakes.[58] Later, legislation was passed allowing the Crown to take ownership of lakes and other inland waters.

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[55] National Park inquiry #E series submissions, Wai 1130.
[56] Tony Walzl, "Hydroelectricity Issues: The Tongariro Power Development Scheme," (Wai 1130, #A8, commissioned by the Crown Forestry Rental Trust, 2005), paras 417-21, 157-8.
[57] For example Brief of Evidence of George Te Waaka Eruera Asher, Wai 1130, #G52a, October 6, 2006.
[58] Ben White, "Inland Waterways: Lakes," in *Rangahaua Whanui National Theme Report Q* (Wellington: Waitangi Tribunal, 1998), vii. The Rangahaua Whānui project was initiated by the Waitangi Tribunal in the mid-nineties, and consisted of 15 regional research reports, and several thematic research reports (of which Ben White's lakes report was one). It aimed to provide a broad overview of Crown actions and omissions that had affected Māori land ownership and other treaty issues, in order to assist the evaluation of specific claims.

The tenuousness of Crown rights, and public access rights, to lakes in New Zealand led to a series of negotiated agreements in the 1920s. A deal was signed with Tūwharetoa in 1926. In the lead-up to this agreement the consistent position taken by the Tūwharetoa representatives was that the title to the bed of the lake was not on the negotiating table. The then Prime Minister, Gordon Coates, had publicly offered his guarantee that the government had no intentions of obtaining the title to the lakebed, and that any agreement would be restricted to access and use arrangements. When the final agreement was drawn up and signed, however, the leaders of Tūwharetoa ceded their rights to the bed of the lake and surrounding streams in exchange for an annual payment.[59]

The loss of the lake bed was a grievance that the generations of Ngāti Tūwharetoa carried until the return of the title in 1992. The deal made in 1926, and the body created to administer funds accruing from it, were to provide some benefits to the iwi, however. The annual payment itself was arranged to be the sum of £3000 until such time as the annual fees earned from the sale of fishing licences reached £6000, at which point the annual payment to Tuwharetoa would a sum equal to half the money earned from licence fees (as long as that amount remained above £3000).[60] The body established to administer these funds on behalf of Tuwharetoa was the Tuwharetoa Māori Trust Board, chaired by Hoani Te Heuheu with Puataata Alfred Grace as secretary. The deal proved reasonably lucrative, and the board enduring. The founding families of the Tūwharetoa Māori Trust Board continue to be major forces in Tūwharetoa politics.

Whanganui and the River

At the time of British colonisation of New Zealand, English common law had it that the beds of non-tidal rivers, lakes and highways were owned by the owners of the adjoining land. In practice, however, this law was often ignored with respect to navigable rivers and highways as their high public value and use led to an assumption of Crown ownership. When cases reached the New Zealand courts, the legal opinion was that the English common law principle applied, but that it might be more easily laid aside in New Zealand due to the special circumstances of colonisation.[61] In the litigation over the Whanganui River the Crown argued (among other defences) that the 1848 deed of sale of the surrounding lands included the bed of the Whanganui River. A succession of

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[59] Ibid., 181.
[60] Ibid.
[61] Waitangi Tribunal, *Whanganui River Report,* Wai 167, (Wellington: Waitangi Tribunal, 1999), 17.

laws in the nineteenth century cemented the assumption that the Crown had the right to control the use of the Whanganui River.

The litigation brought forth by the confederation of Whanganui River tribes known collectively as Te Atihaunui a Pāpārangi, began in earnest with a Native Land Court hearing in 1938 (which decided that the bed of the river was Maori land held in customary title), and from there passed through the Native Appellate Court, the Supreme Court, a royal commission, the Court of Appeal, the Maori Appellate Court, and the Court of Appeal again, before a decision was reached in 1962. The Court of Appeal's 1962 decision held that the title to the river bed had passed to the Crown when the Native Land Court had transferred the title of the adjoining land from Maori to the Crown.[62] The Waitangi Tribunal held hearings in 1993 and 1994, and the report was published in 1999, but settlement was yet to be reached at the time of writing. The case has been the longest-running in New Zealand history.[63]

Characterisations of the period 1907-1970 in the inquiry

This period, the long formative years of the national park institution, is of key importance to an understanding of the relationship as it stands today. This was not well-recognised in the course of the claim, which focused on the actions and intentions of Crown and Māori agents, especially relating to the 'gift.' The research of ecologist and historian Geoff Park for the Flora and Fauna inquiry showed that the period constituted a kind of non-malicious neglect of Māori and their interests in wildlife management.[64] The term 'effective exclusion,' the title of Park's report, was picked up by the claimants in the National Park inquiry, but the nuance of his argument, that this exclusion was a kind of symptom of the times rather than a deliberate ploy to marginalise Māori, was not a part of their submissions. The narratives the Tribunal process encourages, especially the claimant practice of focusing on the deliberate actions of Crown agents, and both Crown and claimant reluctance to look at institutional factors, limits a full exploration of the ways in which the past has shaped present relationships.

The race-relations of the early twentieth century have not been as studied as that of the nineteenth, and are much less a focus of attention in the work of the Tribunal. Richard Hill argues this is because the more dramatic conflict and the larger part of Māori land

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[62] Ibid., 195.
[63] David Young, "Ngā Iwi O Whanganui – the 20th Century," *Te Ara - the Encyclopedia of New Zealand*, http://www.teara.govt.nz/en/whanganui-tribes/3, updated March 4, 2009.
[64] Park, *Effective Exclusion?*, 667.

loss were already over by 1900, although the years between 1909 and 1920 were also a period of substantial land alienation.[65] Another historian, Angela Wanhalla, points out that the writing on this period is dominated by the world wars and the first Labour government, while histories of race-relations focus on biographies of the Māori leaders of the time.[66] Legal academic Paul McHugh has described the lack of attention in historical literature as "effective exclusion," a non-deliberate but harmful omission of Māori presence in the writing about New Zealand history (Geoff Park borrowed the term to refer to the exclusion of Māori from natural resource management in New Zealand's past).[67]

There are questions here about the reasons for the lack of attention to the broad sweep of race relations in this period. It is possible that the "effective exclusion" of Māori in historical literature (including Tribunal literature), is simply a result of the marginalisation of Māori in the processes of government in these years. The real, political neglect of Māori in this period has made them less 'visible' in the written records on which historians tend to rely. Another explanation might be that historians and those interested in history more generally are drawn to armed conflict and big personalities, and neglect less dramatic historical characters and events, as Wanhalla has argued. Paul McHugh argues that the writing-out of Maori in history is part of a 'primeval need' for political societies to create a foundation narrative which explains and legitimises their existence and character. In New Zealand, he argues, this story is about the triumph of representative government, and the moves by which New Zealand became politically independent from Britain. The Māori role in this narrative is as an initial obstacle to the progress of statehood that was "cleared away" during the late nineteenth century.[68]

All of these factors have a part to play in the relative neglect of this historical period in Tribunal inquiries. The powerful characters of Māori leadership in this era have attracted the focus of historians, as have the powerful events of the two world wars and intervening depression. The grand narratives of national identity and national

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[65] Richard S. Hill, *State Authority, Indigenous Autonomy: Crown-Maori Relations in New Zealand/Aotearoa 1900-1950* (Wellington: Victoria University Press, 2004), 16; Tom Brooking, "'Busting up' the Greatest Estate of All: Liberal Maori Land Policy 1891-1911," *The New Zealand Journal of History* 26, no. 1 (1992): 78.

[66] Angela Wanhalla, "Review of *State Authority, Indigenous Autonomy: Crown-Maori Race Relations in New Zealand/Aotearoa, 1900-1950*," *Canadian Journal of History* 40, no. 3 (2005).

[67] Paul McHugh, "Australasian Narratives of Constitutional Foundation," in *Quicksands: Foundational Histories in Australia and Aotearoa New Zealand*, ed. Klaus Neumann, Nicholas Thomas, and Hilary Ericksen (Sydney: University of New South Wales Press Ltd, 1999), 103.

[68] Ibid., 98-103.

independence have served to elide Māori political presence in these years, particularly their continued campaigns for self-determination. In the Tribunal, this period has been neglected due to its relative lack of dramatic conflict and land alienation, and the parallel absence of deal-cutting and promise-making. It is, however, a fundamentally important period in the race relations history of New Zealand, and deserves more attention from both the academy and the Tribunal.

Although all the parties in the inquiry have tended to disregard the period 1907-1970 compared to the previous and subsequent periods, the research reports which do address these years present different interpretations of Māori exclusion from park management. The main Crown research reports portray national park reservation as a process resulting from increasingly enlightened attitudes towards the environment, which in its execution unintentionally caused limited and largely unavoidable harm to local Māori groups.[69] Claimant historians characterise it as a process of Crown acquisition of largely Māori land for the main purpose of commercial gain from the tourist industry, which in its execution deliberately and avoidably excluded and marginalised Māori to great detriment.[70] Whether the officials who encouraged and enabled the creation of scenic reserves were spurred more by the tourism dollar or the notion of 'preserving the wonders of nature for future generations,' took up large portions of inquiry time, with Crown researchers and lawyers arguing that 'public ownership' was the primary goal, and claimant researchers and lawyers countering that creating tourism revenue out of agriculturally unsuitable lands was a far greater motivation. Advocates for parks at the time used both arguments and evidently did not think that they were inconsistent, or that either was immoral. Immorality was seen to lie in the potential for these areas to be lost, desecrated or wasted rather than in making money from their use.

The focus on the motivations of the Crown in establishing scenic reserves has obscured the main cause of Māori exclusion during the formative period of the national park institution. A national park, in these years, became a place where recreational interests ruled, where native species were to be left strictly alone, and the introduction of non-native species eventually forbidden. Most importantly, the idea of a national park as a play area for all citizens, an area open to anyone who had the means and inclination to visit, became embedded in these years. The idea of the mountains as a place which had

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[69] For example Andrew Joel, *The Origins of the Gift of the Peaks and the Establishment of the Tongariro National Park,* (Commissioned by the Crown Law Office, 2005); Edwards, *Tongariro National Park.*
[70] For example Coombes, *Tourism Development*; Anderson, *Tongariro National Park.*

a particular significance for Māori, or a place where they should have influence, was lost to Pākehā during this time. The last thirty years has seen an effort to change the pattern of exclusion established in the first half of the twentieth century.

Chapter Seven: Eroding the Island's Edges 1970-2006

The late 1960s and early 1970s are widely seen as a turning point in New Zealand race-relations, during which political issues relating to Māori became national news stories again, after a period of roughly seventy years of 'effective exclusion.' This was a vibrant period for Māori, culturally and politically, in which they made their views and concerns heard across the country. Many writers mark this period as beginning a new kind of relationship between Māori and the government.[1] Since the seventies Māori have been more active in protesting against government actions, more politically organised, and more skilful at using the courts to force the government into action. Partly as a result of this protest, and partly due to changes in Pākehā attitudes in this era, the government made some effort to alter the way they dealt with Māori issues, largely by consulting with iwi representatives.

There was a policy transition in these years from the language of 'assimilation' into 'biculturalism' or 'partnership.' Whether this represented a paradigm shift or simply an improved version of the previous pattern of relationships has been the subject of academic debate. Paul McHugh has argued that, in the 1970s:

> [t]he relationship between governments and indigenous peoples was transformed from one which was fundamentally submissive to one which became antagonistic and disputatious. However, the underlying political dynamic remained the same, one of domination and counter-domination.[2]

The period represented a radical increase in Māori political action on a national stage, accompanied by a limited increase in sympathy from (Labour) governments and liberal Pākehā. James Belich states that the key change in these years was "a huge increase in Maori activism, radicalism and political and cultural self assertion," but adds that there was also a shift in Pākehā attitudes in this period, making them "somewhat readier to listen."[3]

These observations of greater antagonism and also greater co-operation seem paradoxical, but the change could simply be characterised as being one of increased exchange. One of the patterns of the greater level of interaction was, as McHugh notes,

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[1] For example, Richard Hill, *Māori and the State: Crown-Māori Relations in New Zealand/Aotearoa, 1950-2000* (Wellington: Victoria University Press, 2009), ix; Belich, *Paradise Reforged,* 475; McHugh, "Aboriginal Identity and Relations," 110.
[2] McHugh, "Aboriginal Identity and Relations," 110.
[3] Belich, *Paradise Reforged,* 475.

a pattern of dispute. The negotiations and legal decisions that resulted from these disputes, however, have led to more frequent and better organised interaction between government agencies and Māori. Among more liberal members of the government, bureaucracy, and the Pākehā public there was a real sympathy for Māori interests. New Zealanders were mobilising on various different political issues in the late sixties and seventies. This was a time of social ferment, with a set of overlapping protest groups advocating for a series of changes to New Zealand society, and the more conservative sections of the New Zealand public strongly resisting such changes. The anti-racist, feminist, peace, open government and environmental movements were all part of this mixture. The environmental and Māori protest movements, allied by their concern over pollution, worked closely together.

The Treaty of Waitangi became an important symbol in the development of these relationships post-1970. After a century as a 'legal nullity,' the Treaty was reinstated as a legal and political force in these years by virtue of references made to it in new Acts of Parliament.[4] The first was the *Treaty of Waitangi Act* 1975 and its amendment in 1985, which, respectively, established the Waitangi Tribunal and granted it powers to inquire into breaches of the Treaty dating back to 1840. In the mid-1980s references to 'the principles of the Treaty of Waitangi' began to be inserted into a set of new laws, several of them relating to environmental management. These short references became leverage points for Māori to challenge the government in court, beginning with the "Lands case" in 1987.[5] Since 1987 there has been fairly frequent litigation surrounding legislative references to the principles of the Treaty, in which Māori have won some significant victories. Changes in the law, policy and organisation of relationships have often come in the wake of such victories.

Relationships between Māori and the government were also fundamentally changed by the new practice of consulting with community groups about governmental decisions thought to have an impact upon them. This change was also due to protest movements in the 1970s and 1980s for a more 'open government,' with transparent processes and opportunities for the public to participate in decision making. Legislation in the 1980s, including conservation legislation, involved stipulations for government agencies to

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[4] In an infamous case in 1877, *Wi Parata v Bishop of Wellington,* Chief Justice James Prendergast declared the Treaty completely void in any legal sense. Though many of his conclusions were overturned in the early twentieth century, the Treaty had very little weight in domestic law from that time until the Waitangi Tribunal was established in 1975.

[5] *New Zealand Maori Council v Attorney General* [1987]. The case is also sometimes referred to as the State Owned Enterprises case.

involve the public in the design and delivery of government services, through public meetings and liaison with 'stakeholders.' This policy leaves final decision-making power in the hands of government agencies, but the process of communication has created relationships between departmental staff and community groups. Māori, again particularly through iwi authorities, have been classified as stakeholders, and as a result have developed relationships with local agencies. This situation, while an improvement on the previous lack of contact, has not met the demands of Māori for partnership with the government. In court cases and Waitangi Tribunal hearings over this period it has been clear that Māori want to have a greater say in government decisions than merely that of one interest group among many.

The Tribunal provided an outlet for Māori grievance, and there were fewer protest events in the late 1980s and 1990s, but they did not entirely stop. In 1995 the National Government, concerned at the amount of money being spent in settlements, proposed to cap the government funds available for settling Treaty claims at one billion dollars. The arbitrariness of the figure, and the lack of consultation in the decision, caused great resentment among Māori. The debate became known as the 'fiscal envelope' controversy. Sir Hepi Te Heuheu convened a huge meeting of tribes at Hīrangi marae in Tūrangi to discuss the issue. The Government eventually abandoned the proposal. In the same year there was a 79 day sit-in at Moutoa Gardens in Whanganui (then Wanganui), which the occupiers argued had been excluded from the original sale of Whanganui lands in 1848. The protest was partly in response to the lack of progress on the settlement of their claims over the Whanganui River.[6]

In the early twenty-first century there was a furore over tenure issues relating to the foreshore (the area of land between high and low tide marks) and seabed. In 2003, the Supreme Court made a decision that cases could be taken to the Māori Land Court to determine whether or not native title still applied over parcels of the foreshore and seabed.[7] The issue received a very large amount of media attention, raised Pākehā concern, and the then Government, led by Helen Clark, stepped in and created a bill to vest the foreshore and seabed in the Crown. In January the following year, before the Foreshore and Seabed Bill had been made into law, the issue was further inflamed by a speech given by the then opposition leader, Don Brash, to the Rotary Club at Orewa,

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[6] Diana Beaglehole, "Whanganui region - Māori and Pākehā," in *Te Ara - the Encyclopedia of New Zealand*, updated January 18, 2010, http://www.TeAra.govt.nz/en/whanganui-region/10.
[7] *Ngati Apa and others v Attorney-General* [2003] 3 New Zealand Law Reports 643.

north of Auckland. The Orewa Speech, as it came to be known, attacked all affirmative action measures targeting Māori, the references to the Treaty of Waitangi in legislation, and aspects of the Treaty settlement process, which Brash referred to as the 'grievance industry.'[8] The speech gave the flagging National Party a twenty per cent boost in their support, and fuelled yet more controversy. A hikoi (march) was organised in protest, and on the 5th of May 2004 protesters flooded into parliament lawns. The hikoi was met by some ministers, but the Prime Minister refused to face the crowds. One of the Government's Māori MPs, Tariana Turia, resigned over the issue, and went on to co-found the Māori Party with former Auckland University academic Pita Sharples. The *Foreshore and Seabed Act* was eventually passed in November 2004.[9]

Conservation management 1970-2006

Conservation management has been one of the areas where there has been a particularly high level of interaction between Māori and the government. Many key conservation and resource management statutes passed in the 1980s and 1990s included clauses referencing the Treaty. Ranginui Walker raises the possibility that this was due to a perception among bureaucrats that the interests of conservation managers and the interests of Māori largely overlapped. He describes the way the Treaty came to be elevated 'to the level of a constitutional instrument':

> This change vindicated Maori belief in the Treaty, their patience in persisting with it, and the fortitude of contemporary activists who continued the struggle against Pakeha domination. But the change would not have occurred without a responsive government and Pakeha supporters within bureaucratic systems who could see advantages for their concern accruing from the incorporation of the Treaty in their statutes. The Conservation and Environment Acts are cases in point.[10]

Walker alleges that bureaucrats, notably those going into the new environmental departments, welcomed the inclusion of Treaty clauses because they believed the clauses would help them achieve their conservation goals.

There was certainly cause for bureaucrats to believe that giving weight to Māori interests would bring benefit to conservation goals. The conservation movement and the Māori protest movement had a substantial number of shared goals, and a record of

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[8] Don Brash, "Nationhood," (Speech given to the Orewa Rotary Club, January 27, 2004), accessed 30 June 2011, http://www.national.org.nz/article.aspx?articleid=1614.
[9] The *Foreshore and Seabed Act* was repealed in 2011, outside the timeframe of this thesis, and replaced by the *Marine and Coastal Areas (Takutai Moana) Act* 2011.
[10] Walker, *Ka Whawhai Tonu Matou,* 265-6.

working together over the 1970s and early 1980s. Massey University lecturer Peter Horsley has described this co-operation: through protests over power station proposals in the 1970s, to the Motunui-Waitara, Kaituna and Manukau inquiries of the Waitangi Tribunal in the early eighties.[11] By the late 1980s, however, the relationship had become uneasy. Legal academic Alexander Gillespie, writing in 1998, identified a "conservation backlash," manifested by "a growing body of literature [which] has openly questioned the alleged environmental values of indigenous groups."[12] Former director of the Waitangi Tribunal, Morris Te Whiti Love, also described the rift, and his opinion of its source:

> …the Maori cause had been of great benefit to the conservation movement until it started to take a life of its own. This became very uncomfortable for the liberal non-Maori and provided for the parting of the ways.[13]

Both writers placed these changes in the eighties and nineties. The changing relationship between Māori and environmentalists can be seen in the record of submissions to the Waitangi Tribunal over these years. This alliance soured from the late eighties, as the establishment of DOC and the increasing empowerment of tribal authorities repositioned Māori and environmentalists into more problematic roles with respect to each other.

In 1969, neither of the two major political parties in New Zealand had separate sections for the environment in their manifestos,[14] but public protest during the 1960s and 1970s over a proposal to set up a hydroelectric scheme at Lake Manapouri in the South Island, made environmental issues a major political concern. It also became clear that the incumbent Nature Conservation Council was an ineffective agency, as it failed to have any impact on the campaign.[15] One of the major concerns of the New Zealand environmental movement was the reform of government administration of the environment, which, until the 1980s, was divided between many different agencies,

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[11] Peter Horsley, "Recent Resource Use Conflicts in New Zealand: Maori Perceptions and the Evolving Environmental Ethic," in *Environmental Politics in Australia and New Zealand*, ed. Peter Hay, Robyn Eckersley, and Geoff Holloway (Board of Environmental Studies, University of Tasmania, 1989).
[12] Alexander Gillespie, "Environmental Politics in New Zealand/Aotearoa: Clashes and Commonality between Maori and Environmentalists," *New Zealand Geographer* 54, no. 1 (1998): 21.
[13] Morris Te Whiti Love, "Aotearoa/New Zealand by the Year 2020: Maori and European Perspectives,"(c.1997), http://www.iiirm.org/publications/Articles%20Reports%20Papers/Self%20Determination/Morrie_Our_Country.pdf, accessed on 28 May, 2008.
[14] Ton Buhrs, *Working within Limits: The Role of the Commission for the Environment in Environmental Policy Development in New Zealand* (University Microfilms International, 1993), 105.
[15] Ibid., 95.

many of which were primarily mandated to use and exploit environmental resources for economic gain.

Changes were made by successive governments in response to the environmental movement's demands for institutional reorganisation. A Minister for the Environment was appointed in 1972 but no changes were made in related departments to create a separate role for him.[16] The first effective body set up by the government to identify and advise on environmental concerns was the Commission for the Environment, also established in 1972. It was an 'arm's length' organisation that had some freedom from government strictures, but no power beyond that of recommendation.

In 1980, the National Government passed a new *National Parks Act*. This Act replaced the National Parks Authority and National Park Boards with a National Parks and Reserves Authority (NPRA) and twelve district based National Parks and Reserve Boards, in charge of policy. Administration and operation of National Parks remained with the Department of Lands and Survey. When introducing the Bill, the then Minister of Lands, V.S. Young, assured Parliament that "...the basic philosophies and spirit of the *National Parks Act* 1952 have been brought forward unchanged..."[17] Koro Wetere, the Member for Western Māori, asked if Maori, in particular those connected to Tongariro, Egmont and Urewera National Parks, had made submissions to the special Government caucus committee which had investigated the previous system. He also queried whether there would be Māori representation on the NPRA. Young answered that there was special representation provided for Māori on the Tongariro and Egmont boards, that there were currently two Māori people on the Urewera board, and he did not see a necessity for representation on the NPRA.[18] Much of the debate on the bill was in regard to whether or not it was a necessary measure.[19] The key ambition of the National Government in passing the Act appeared to be the reform of the previous structure of multiple individual park boards and reserve boards, which was seen to be wasteful of resources. There was also greater provision for community consultation in the 1980 legislation.

Until 1987, however, there was no government department with responsibility to advocate for environmental conservation. The Māori rights and environmental

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[16] Ibid., 108. The minister between 1972 and 1975 was Russell Marshall.
[17] New Zealand Parliamentary Debates (NZPD), Vol. 430, June 12-July 8, 1980, 1127-8.
[18] Ibid,, 1128.
[19] Ibid., 1134.

movement were both minority protest groups fighting against the political establishment, and there was substantial overlap in their interests and concerns.[20] Both groups sought to have their perspectives better represented in government decision-making, and both groups had strong concerns about the degradation of the New Zealand environment. In the early 1980s, when the Tribunal was starting to become a real force, but before extension of its jurisdiction to address historical claims, the Tribunal became a venue where Māori brought forward their concerns over environmental degradation, and they were often supported by environmental interest groups, as well as the Commission for the Environment.

This co-operation can be seen in the record of submissions to the inquiries. Three non-governmental environmental interest groups were in attendance during the Motunui-Waitara inquiry hearings: the Royal Forest and Bird Protection Society, the North Taranaki Environmental Protection Association (the members of which included some claimants) and Taranaki Clean Sea Action Inc. The Commission for the Environment was also present and played a very active part in the hearing. The Motunui-Waitara claim was brought forward by Aila Taylor on behalf of Te Atiawa iwi of Taranaki. They were concerned with the granting of the right for the Synfuels plant to discharge their waste out of a new pipeline at Motunui. This was complicated by the fact that there was already a pipeline out at Waitara that had polluted the surrounding reefs (kāwa) and the kāwa at Motunui were some of the few left unpolluted. This issue attracted widespread attention because the Synfuels plant was one of the contested 'Think Big' projects. The Commission for the Environment's submission stated that "the environmental impact of a given level of pollution depends in part on the subjective reaction of individuals to that particular form of pollution," and also argued that the Treaty of Waitangi should be used as a reference point "for any professional assessment of environmental impact in New Zealand."[21] It is clear that there was much goodwill between Māori and environmentalists during the claim's progression, and little time was spent dwelling on potentially contestable details; for instance, the claimants' request to have the size limitation on pāua (abalone) lowered for the area was not debated at any length during the hearings.[22]

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[20] See Mills, "The Changing Relationship."
[21] Submission of Ken Piddington, the Commissioner for the Environment. Wai 6, second hearing, tape 1/1 first side, held at Waitangi Tribunal.
[22] Conversation with Dr. Ben Gray, September 18, 2003.

The Kaituna and Manukau hearings in 1984 also saw the Commission for the Environment and various environmental NGOs give submissions in support of the claimants. At the Kaituna hearings the Wildlife Service, part of the Department of Internal Affairs, presented a submission against the claimants, arguing that cultural concerns should not be allowed to override scientific findings over such matters as safe levels of pollution.[23] It seems that the environmental body's status *vis-à-vis* the government had a strong effect on whether or not they would (or could) come out in support of Māori at the Tribunal. The creation of a governmental conservation advocacy body, the Department of Conservation, in 1987, made the Māori-environmental alliance more complex, as did several other changes in the mid to late 1980s.

In 1984 a young Labour Party, led by David Lange, swept into government on a platform of social change. The following year the *Treaty of Waitangi Act* was amended to allow the Tribunal to investigate claims stretching back to the signing of the Treaty in 1840. This considerably changed the nature of claims brought to the Tribunal. Pollution and environmental issues were still part of claims, but these now shared inquiry time with the more lasting issues of land loss, economic and political marginalisation, dating back over a hundred years. This made claims less relevant to environmentalists and environmentalists less relevant to claims.

The Muriwhenua fishing claim was one of the first cases where these broader Māori goals became clear. The Muriwhenua claimants, from Northland, cited the second article of the English version of the Treaty, which gave the Queen's confirmation and guarantee that Māori would have "the full, exclusive, and undisturbed possession of their…fisheries…so long as it is their wish and desire to retain the same in their possession."[24] The claim arose from concern over the quota management system created in the 1986 Fisheries Amendment Act. It was argued that the tradeable quotas were, by setting up an exclusive property right, contravening the Treaty because the Crown did not set aside any percentage of those property rights to Maori. The Muriwhenua Fishing claim was important because the claimants asserted their right to commercial fishing under the Treaty. It also had a new dynamic, problematic for conservationists, in that the system had been set up as a conservation measure. The settlement of the Muriwhenua fishing claim, under the Treaty of Waitangi (Fisheries Claims) Settlement

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[23] Submission of C.J.Richmond, New Zealand Wildlife Service, heard during the week 8 October 1984, Wai 4, #A4, Microfiche 0073 E09, Victoria University of Wellington.
[24] See Appendix A.

Act 1992, gave Māori a 50% share in Sealord Products, the largest fishing company in New Zealand, and a 20% share in each new species to be introduced into the Quota Management System. An earlier interim deal in 1989 established an organisation to promote Māori fishing interests, now known as Te Ohu Kaimoana. This was a groundbreaking settlement (though its implementation had some severe problems) that saw Māori achieve some real power in the fishing industry.[25]

Another important change in these years was the strengthening of tribal authority bodies. A 1986 report on social welfare for Māori, *Puao-Te-Ata-Tu,* identified the presence of 'institutional racism' in the social welfare department and across the bureaucratic board.[26] The report defined institutional racism as "a bias in our social and administrative institutions that automatically benefits the dominant race or culture, while penalizing minority or subordinate groups." The Advisory Committee that compiled the report travelled to marae all over the country, and at each marae heard demands from Māori for greater management over their own affairs. *Puao-Te-Ata-Tu* recommended "allocating an equitable share of resources, sharing power and authority over the use of resources."[27] The fourth Labour Government set about a process of devolution, or 'transferral of resources,' to iwi authorities designed to fulfil these concerns.[28] The construction and 'legal formalization' of iwi authorities, and the government policy to work with 'large natural groupings' in the Treaty settlement process has fostered the development of powerful iwi-based groups.[29]

The Department of Conservation was established in 1987. This was in response to the increasingly vehement demands from environmentalists for an agency solely responsible for protecting the environment. These demands can be seen as a continuation of the calls made by conservation advocates since at least the 1930s. In 1982 representatives of some of the larger environmental groups compiled a strategy for environmental management. Key recommendations in their report were to create a "nature conservancy" and a separate Ministry for the Environment.[30] The then Labour Government took these recommendations on board in the design of the *Conservation*

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[25] See Paul Moon, "The Creation of the "Sealord Deal"," *The Journal of the Polynesian Society,* 107, no.2 (1998) for a discussion of some of the implementation problems.
[26] Walker, *Ka Whawhai Tonu Matou,* 280.
[27] Sharp, *Justice and the Maori,* 209, 281.
[28] Ibid., 191.
[29] The term 'legal formalization' comes from ibid., 191.
[30] The report was titled *Environmental Management in New Zealand: A Strategy.* Peter St. John Crabtree, "A Nature Conservancy for New Zealand : The Department of Conservation-- Its Genesis" (Post Graduate Diploma, University of Otago, 1989), 2-3.

Act; DOC was given an advocacy role for environmental protection in resource management decisions. The *Conservation Act*, however, also requires DOC to provide for recreational and tourism interests.

The newly created Department was soon to be radically restructured. The *Conservation Law Reform Act* 1990 cut DOC's staff numbers by almost half, disestablished the National Parks and Reserves Authority and National Parks and Reserves Boards, and created the New Zealand Conservation Authority. The debates on the Bill show that the idea of public consultation was by then a major concern. Speakers emphasised both the consultation that had happened in the process of writing the Bill, and the consultation in conservation management decisions that would be guaranteed as a result of the Act.[31]

The power dynamics between conservationists and Māori, therefore, were quite different by the late 1980s than they had been in the early years of the decade. Both Māori and the staff of the Department of Conservation were in the position of having the opportunity to effect some real gains in their fields, and, perhaps naturally, neither was very enthusiastic about compromising on their visions. Their new power and independence also meant that the ideological issues which divided them did not get swept under the carpet as they had before. Conservation NGOs became in some cases active opponents of Māori development initiatives in the 1990s.[32]

There was a substantial degree of optimism in DOC about the potential of relationships with Māori. Their first director-general, Ken Piddington, was knowledgeable about Māori culture and emphasised the importance of a bicultural approach to conservation.[33] There were efforts in the 1990s, at national and conservancy levels, to establish relationships with Māori. In the early nineties Kaupapa Atawhai manager positions were created in conservancies. Their role was to "work with iwi and to ensure steady progress toward the ideal of partnership."[34]

In 1995 a legal case, *Ngai Tahu Maori Trust Board v Director-General of Conservation*, sometimes referred to as the 'Whales Case,' provided some further

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[31] NZPD, vol. 505, February14 -March 15, 1990, 501, 506.
[32] Guy Salmon describes some of these conflicts in Guy Salmon, "Being a New Zealander: Our Relationship with Nature," (*He Minenga Whakatū Hua o te Ao,* University of Otago, 2000), http://www.otago.ac.nz/titi/hui/Main/Talks2/Salmon.htm, accessed 12 June 2011.
[33] David Irwin, "A Study of Co-Management of National Parks in Aotearoa/New Zealand" (Masters thesis, Lincoln University, 1996), 22.
[34] DOC, Greenprint Overview, *The State of Conservation in New Zealand, Brief to the Incoming Government*, Wellington, 1993, 24, cited in Robert. McClean and Trecia Smith, *The Crown and Flora and Fauna: Legislation, Policies, and Practices, 1983-98* (Wellington: Waitangi Tribunal, 2001), 369.

clarity on DOC's responsibilities under section four of the *Conservation Act*. Four South Island Māori groups, going under the collective title of Ngai Tahu, took the Department of Conservation to court over the process of granting concessions to tourism operators of the coast of Kaikoura.[35] The Ngai Tahu groups had permits to conduct commercial whale watching tours, and the Department was considering granting further concessions to non-Māori businesses. The Ngai Tahu Maori Trust Board alleged that this would contravene the Department's directive to "give effect to the principles of the Treaty of Waitangi." The judge acknowledged that the Director-General should have consulted with the Ngai Tahu groups but rejected their case for freedom from competition. Ngai Tahu appealed, and the Court of Appeal ruled that the Director-General was bound to "give effect to the Treaty of Waitangi" in the administration of the Marine Protection Act, and all other Acts listed in schedule 1 of the Conservation Act (which includes the National Parks Act 1980). Justice Cooke, who heard the Court of Appeal case, considered that the principles of the Treaty did not extend to a veto right for Ngai Tahu over permit applications, but that "…the Crown is not right in trying to limits those principles to consultation…" as "…it has been established that principles require active protection of Maori interests."[36] The Whales Case strengthened the Māori argument for greater involvement in conservation management.

What 'active protection,' or 'partnership,' should entail was the point of issue in these years. Resource management specialist Peter Horsley argued at a conference in 2000 that:

> Government agencies are reluctant to move away from the time-honoured consultation model. They cite a lack of capacity in the interested communities to engage in effective management. They highlight their statutory responsibilities to deliver environmental and conservation outcomes in an efficient manner. They are reluctant to commit their resources to long term (and sometimes uncertain) community capacity building projects that go beyond yearly budget cycles.[37]

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[35] *Ngai Tahu Maori Trust Board v the Director-General of Conservation* [1995], 3 New Zealand Law Reports 534, 535. Kaikoura is on the north-east coast of the South Island.
[36] Ibid.
[37] Peter Horsley, "Colaborative Management: Pre-Conditions and Prospects," (*He Minenga Whakatū Hua o te Ao* University of Otago, Dunedin, 2000), http://www.otago.ac.nz/titi/hui/Main/Talks2/PHorsley.htm, accessed 12 June, 2011.

These practical and political concerns came to the fore in the 1990s and early twentieth century. Horsley also suggested that Māori have been slow to acknowledge the complexities of DOC's task, and the 'chronic underfunding' with which they struggle.[38]

Tongariro

The history of the park in the years 1970-2006 reflects wider changes in New Zealand race-relations. After the long spell of very little Māori involvement in park processes, the combination of a growing awareness among senior park managers of the Māori history and culture of the area, and the political acumen of the tribal leaderships of the time, led to a slow re-engagement between park managers and Māori. The history of Tongariro's relationships fit a description given by one of the Director-Generals of Conservation in these years:

> … the development of any relationship is a dynamic process. Rarely is it the case that a relationship can be said to have deepened, broadened, strengthened, become closer, etc., in an even, smooth or straight-line process. It is much more likely that if the progress of a successful relationship is charted, it will be portrayed as having had a number of ups and downs or as having moved through different phases associated with the working through of difficulties.[39]

The difficulties involved in the relationship usually involved Māori feeling that their interests had not been adequately taken into account. A tangata whenua description of the changes went as follows:

> At my first meeting with the Department of Conservation ('DOC') they said 'we are the conservation group' I said 'hang on – we have been conservationists for centuries, you just got here yesterday'! DOC's attitude has changed a lot in the last 10 years, more so with this concept of iwi consultation. Prior to that, not a lot of consultation went on at all or only to a selected few. It took a long time to even get one of our own as a Ranger or as a Maori liason [sic] officer. They didn't really want to know us.[40]

Tribunal claims and court cases were used by Māori as ways to force DOC to further engage with them. Despite these conflicts, there was a substantial amount of goodwill on all sides in the relationships between DOC and the two tribal groups with which they primarily consult.

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[38] Ibid.

[39] Bill Mansfield, "Focusing on the Future," in *Living Relationships, Kōkiri Ngātahi: The Treaty of Waitangi in the New Millenium* (Wellington: Victoria University Press 1998), 212. Mansfield was the Director-General of DOC between 1990 and 1997.

[40] Brief of Evidence of Turuhia (Jim) Edmonds, Wai 1130, #D29, May 5, 2006, paragraph 14.1, 21.

These two groups have had quite different experiences with DOC. With Ngāti Tūwharetoa in particular, the 'gift,' though contested, has been repeatedly referred to and celebrated in official statements, and has fostered a sense, among Pākehā at least, of a special relationship. The hundred-year centenary of the 'gift' in 1987 was treated by the Government as the centenary for national parks in New Zealand, and the Government's elaborate plans for commemoration helped to set this relationship in motion. Government engagement with the separate hapū of Ngāti Tūwharetoa, and with Whanganui Māori, evolved slowly over the 1990s and early years of the twenty-first century.

The centenary was a very important event in the relationship between the paramount chief, the Tuwharetoa Maori Trust Board and DOC. The main ceremony was held at Whakapapa on the 27th of September 1987, one hundred years since Horonuku Te Heuheu signed the Deed of Conveyance vesting the ownership of the mountain peaks in the Crown. The choice of this moment as the genesis moment of national parks in New Zealand was very significant for the local relationship with Māori. Not only did it commemorate, and further mythologise the 'gift,' it also prompted the organisers of the celebrations to consult the descendants of the man who made the celebrated 'gift.' Sir Hepi Te Heuheu did not let this opportunity pass, and made sure that from this point on the park administrators were directly in touch with the Tūwharetoa Māori Trust Board.[41]

It was not solely this event which began the process of creating a relationship with Māori in the management of the national park. Attitudes towards public participation in management, and towards the roles and rights of indigenous peoples were changing. Before 1987 there was very little consultation or attempt to involve Māori in park management and events.[42] Māori opinion or contribution was occasionally sought by individual staff members, on their own initiative:

> Beforehand there was some Maori involvement, more at an individual level, not because of policy. Somebody would think to themselves it was a good idea and do it. Ad hoc stuff.[43]

Attitudes began to change in the 1970s, which was first manifested with gestures such as the inclusion of Māori legends and histories in park interpretation, attempts to

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[41] Coombes, *Tourism Development*, 420.
[42] Bruce Jefferies, Paul Green and Mark Davies stated this in their interview with Bayley and Derby. Bayley and Derby, *Tongariro National Park Management*, 22.
[43] Interview with Tongariro-Taupō Conservator, March 4, 2008.

pronounce names correctly and new emphasis the 'gift.' Attempts to seek the opinion of Māori in these matters were uncommon.[44]

In November 1979 the National Park Board (shortly to become the Tongariro National Parks and Reserves Board) began publishing a newsletter. The Chief Ranger at the time was Bruce Jefferies, who made a contribution in every issue. Tongariro National Park newsletters (and journals, as they became from the fifth issue in December 1980) made little mention of Māori involvement in the park. A photo of a new carving going up at the Visitors' Centre in 1983 was accompanied by an article written by Horonuku Te Heuheu's great granddaughter. The upcoming centennial celebrations were also noted. In the March 1986 Journal, Jefferies described an organised trip to the mountain:

> **"People of the Land" – Relationships Renewed**
>
> A small event on Sunday 16th February, was possibly the most significant experience in my mind at least, that we have had in the park for a long time. For some time now I have held discussions with Sir Hepi Te Heuheu, his son Tumu, Archie and Rakei Taiaroa and Steven Asher [sic], Secretary of the Tuwharetoa Trust Board, regarding organising a visit to the Park for members of Ngati Tuwharetoa.
>
> Things finally came together and about 30 people ranging from some of the Kaumatuas (or elders of the tribe), to some of the young people shared a day with us. I used the word shared deliberately as Tuwharetoa people are definitely not visitors to Tongariro National Park, they are the Tangata Whenua or "People of the Land."[45]

Jefferies went on in his note to reflect on the "unacceptable compromise" between balancing use requirements and preservation requirements in the Park, comparing "our [Pākehā] chase for tourist dollars," to "the intangible values of the Park" that he believed were the key concerns of Tuwharetoa.[46]

Such sentiments were common in this period. The 1980s was a time of optimism about the potential of cross-cultural learning, and closer relationships between Māori and Pākehā in New Zealand. In December 1986, after Jefferies had left the chief ranger role and Paul Green had stepped in, Ken Piddington, the Director-General of Conservation, wrote a piece in the Journal. In it he said "…this is a time of soul-searching about our bicultural commitment…" and described the Treaty principle of rangatiratanga as a

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[44] Bayley and Derby, *Tongariro National Park Management,* 20.
[45] This list of names constitutes some of the most powerful Māori leaders in the Taupō and Whanganui districts over a period of twenty years. The Asher family are also descended from the Te Heuheu line. Archie Taiaroa was for many years the chairman of the Whanganui River Maori Trust Board and his son, Rakei (Rakeipoho) is the present Secretary of the Tuwharetoa Maori Trust Board.
[46] *Tongariro: Journal of the Tongariro National Park*, No. 25, March 1986, 2-3.

principle of stewardship.[47] The same journal edition included a piece written by a Tūwharetoa elder, K. P. Mariu, explaining the Tūwharetoa connection to the mountain, and saying "[w]e are proud that they are bequeathed to the nation who, as nature lovers, accord them their deep respect."[48] Such comments show the optimism of departmental staff and Māori as to the potential of the relationship between them.

The contact established between the local park staff and members of Tūwharetoa during the planning for the centennial was soon being sought on other related matters. In the lead-up to the centennial, Bruce Jefferies went to "Tūwharetoa" (probably the Trust Board) to talk to them about the renovation of the visitors' centre. Timi Te Heuheu (one of Sir Hepi's sons) found an architect, which, according to Paul Green, helped to make the project acceptable to the Trust Board:

> I was around for some of those meetings and you could see some of the older people weren't happy with the final design, because it was contemporary, not traditional, but in the end they accepted it. It was designed by someone they'd chosen, as well, which helped. It wasn't like we were imposing something.[49]

Park administrators got in touch with Sir Hepi and the Secretary of the Trust Board regarding the centennial in July 1984. Sir Hepi nominated Whakapapa as the appropriate place for the celebrations to be heard, and requested that 'direct communication' continue between administrators and the Trust Board. From this point both DOC and the Centennial Committee consulted the Trust Board in the preparations for the Centennial.[50]

The centennial celebration itself was held at the bowling green at the Chateau. It was a big event; the Governor-General, Paul Reeves, and the Prime Minister, David Lange, both attended. Sir Hepi led, by all accounts, a spectacular haka, and delivered a short speech, which is available as a sound file online:

> Today is a momentous occasion. One hundred years ago my great grandfather Horonuku Te Heuheu Tukino, gifted on behalf of his people the peaks of these mountains, and they became the genesis of Tongariro National Park and the parks of New Zealand.
>
> As a leader Horonuku was afraid and concerned that his mana would be lost if the sacred mountains were taken.

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[47] *Tongariro: Journal of the Tongariro National Park*, No. 26, December 1986, 5
[48] Ibid., 15
[49] Interview with Tongariro-Taupō Conservator, March 4, 2008.
[50] Coombes, *Tourism Development,* 420.

> **And so it was not given away**, but handed over for the taonga to be looked after by all people.
>
> He found a way to do the right thing that would ensure that the people and their mana would be preserved.[51]

Sir Hepi's delivery of the line 'and so it was not given away,' was rushed and emphatic, which seems to corroborate the Tūwharetoa argument in the National Park inquiry, that there was controversy among members of Tūwharetoa at the time as to whether the 'gift' was a gift in the sense that was being celebrated at the centenary. The arguments will be discussed in the following section, but it seems likely that Tūwharetoa were torn between a desire to take the opportunity to emphasise their connection with the mountains on a national stage, and an unwillingness to recognise the Crown's right to claim the mountains as fully ceded by the 1887 'gift.'

DOC did not consult Whanganui groups in the run-up to the centennial. There were some rumours that there might be a protest at the celebrations, but this did not go ahead.[52] Despite the evidence of controversy at the time, among Tūwharetoa and Whanganui people, as to whether or not the centennial 'gift' was an event worthy of celebration, there was enough goodwill among all sides for the event itself to go smoothly. Sir Hepi wrote a foreword in Craig Potton's book *Tongariro: A Sacred Gift* (1987), which had been commissioned for the centennial, and wrote of the ties between Māori, Pākehā and the land established by the 'gift,' which has since been much quoted in government documents, including the Crown submissions to the National Park inquiry. In a powerfully memorialising moment, the government's narrative largely won the day. It seems that Sir Hepi, aware of dissent among the tribe, nevertheless went along with this narrative in order to promote the tribe as connected to the mountain and as willing to work with the government. This strategy was a success in that the Centennial was the beginning of a new, more involved, relationship between park managers and the Tūwharetoa leadership.

The Tongariro-Taupō Conservancy was ahead of its time in this regard. In the early 1990s an eight-member liaison group was formed between the Tongariro/Taupō Conservancy and the Tūwharetoa Māori Trust Board, consisting of four members from each. This was the only board of its sort in the country. When, shortly afterwards, the

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[51] Evidence of Stephen Asher, #G38. Appendix 1, cited in Closing Submissions of Ngati Tuwharetoa, #3.3.43, paragraph 7.182, 154. Emphasis added in those submissions. The speech is available online at: http://www.teara.govt.nz/en/biographies/5t8/1/4, accessed 5 July 2010 (as at February 12, 2012 there seemed to be some fault with this audio).

[52] Interview with Tongariro-Taupō Conservator, March 4, 2008.

Department of Conservation developed its nationwide Kaupapa Atawhai policy, which included establishing a position for a Māori advisor (Kaupapa Atawhai Manager) in each conservancy, there was some argument in the Tongariro-Taupō Conservancy about how this should be accommodated. The Conservancy's position at that time was that there was not enough money to sustain both a Kaupapa Atawhai Manager, whose role was supposed to include a responsibility to liaise between DOC and local Māori groups, and the liaison committee. The Trust Board was initially unwilling to have the committee replaced by an individual, because the liaison committee represented a more direct form of interaction between DOC and Ngāti Tūwharetoa.[53] The Trust Board wanted DOC to hire a Kaupapa Atawhai Manager, and also to continue to fund liaison committee meetings. Eventually a compromise was made, and Huri Maniapoto was hired as a Kaupapa Atawhai Manager on a part-time basis, although this later became a full-time position. The liaison committee was not disbanded. The records show regular meetings through 1993 and 1994, and while I could not find records from later years the liaison committee has existed throughout. According to Paul Green there have been "hiccups" in the regularity of these meetings over the years.[54] During the claim hearings there was only one meeting.[55]

A key event in the Conservancy's relationship with Māori, particularly with the Ngāti Tūwharetoa leadership was its, eventually successful, campaign to get Tongariro listed as a cultural World Heritage Site. In 1989 the New Zealand government applied to the World Heritage Committee for the World Heritage listing of Tongariro National Park. The application argued for both the natural and the cultural features of the site. The arguments for the Park's natural heritage met the criteria employed by the Committee, and Tongariro became a World Heritage site in 1990, but the Committee did not accept the argument that the Park's cultural features justified a World Heritage classification. This was due to the fact that the Māori connection with the mountains was not accompanied by tangible heritage such as buildings or archaeological sites. When the Cultural Landscape category was introduced to the World Heritage repertoire in 1992, allowing for "intangible heritage" to be included, the New Zealand government made another bid for cultural heritage listing. Tumu Te Heuheu went to Berlin to give a submission advocating for the listing of Tongariro as a cultural landscape. DOC funded

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[53] Ibid.
[54] Ibid.
[55] Draft Transcript of National Park Hearing 8, #4.1.12, 459.

the trip, and provided support to Tumu in the preparation of the presentation to the Committee.[56]

In 1993 Sarah Titchens, from the International Council on Monuments and Sites (ICOMOS), came to assess the cultural values of Tongariro for its World Heritage nomination. While she was visiting the park, Huri Maniapoto, the Kaupapa Atawhai Manager at the time, passed away. The tangi (funeral ceremonies) absorbed the next few days.[57] The Conservator noted that:

> …she couldn't have really got a clearer picture of the importance of the mountains to iwi.[58]

The nomination was accepted, and Tongariro became a World Heritage cultural site under the criteria of cultural landscape in 1993.

Hemi Kingi replaced Huri Maniapoto as the conservancy's Kaupapa Atawhai Manager. Kingi was, by all accounts, superb in this role, a natural diplomat and equally effective in Māori and Pākehā cultural contexts. His skills were evident in the negotiations over the Wai 480 claim, brought to the Tribunal by Tūwharetoa over DOC's Conservation Management Strategy (CMS), the main policy document for the conservancy. In 1995, soon after the release of the CMS, Sir Hepi filed a Waitangi Tribunal claim (Wai 480) in objection to the list of Treaty principles contained in the Strategy. Paul Green described his experience of this to the Tribunal researchers Nicholas Bayley and Mark Derby:

> The 1989 management plan was the first realistic attempt to incorporate a Māori perspective. By the Conservation Management Strategy in 1992 we'd learnt a lot. We went around to the Trust Board and to the individual hapū. Next week we got a Treaty claim against us. It was a wake-up call. So we got a working party formed with Joe Williams (as lawyer), me, a planner, the kaupapa atawhai manager, the Asher brothers, Richard Te Heuheu, and a Crown Law solicitor. As time went on, the person stopping progress was that solicitor. The person having the biggest influence was Hemi Kingi.[59]

The conservator's comment is revealing in several ways. He noted that the involvement of higher level bureaucracy, in this case Crown Law, had been a hindrance to the resolution of the conflict, something that has been argued by claimants in the National

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[56] Interview with Tongariro-Taupō Conservator, March 4, 2008.
[57] A tangi is a Māori funeral. The ceremonies can last for several days, and large numbers of people typically attend.
[58] Interview with Tongariro-Taupō Conservator, March 4, 2008.
[59] Paul Green, cited in Bayley and Derby, *Tongariro National Park Management*, 23.

Park inquiry. Green's description of the claim as a 'wake-up call' is a clear indication of the learning process going on, as DOC, blithely thinking it had everyone in agreement, realised via an official accusation of a Treaty breach, that it did not. The acknowledgment of Hemi Kingi as the person of chief influence also indicates the role key individuals play in the development of new initiatives.

DOC agreed to enter negotiations in response to Tūwharetoa concerns, and the claim did not go to the inquiry phase.[60] As a result of the negotiations the section of the Conservation Management Strategy dealing with the definition and application of Treaty Principles was completely rewritten. A new strategy for the relationship, named *He Kaupapa Rangatira* was also drafted. [61] This framework document was intended as a practical guide to relationships between DOC and local Māori, and was to be developed co-operatively, agreed to by all parties, and its progress monitored regularly. Since Kingi's death in 2001, however, no progress has been made on the strategy that he was pivotal in developing.

Although the extent to which the principles have actually been applied is in question as part of the claim, it is a relatively sophisticated set of guidelines. Brad Coombes has noted of the Treaty Principles in the Tongariro/Taupō CMS that "[t]hey represent the most developed statement about co-management which this present author has witnessed in any DOC policy document or management plan."[62] The use of a claim was a relatively successful strategy in the development of the relationship. Another member of DOC involved at the time described it this way:

> [The original Conservation Management Strategy] was worked at over a period of five years, and it failed – basically because there was nothing in it for anyone. So they lodged a treaty claim and that made everyone sit up. Suddenly everyone had something to lose.
>
> There were a few Crown lawyers and they rotated around each other, which tends to happen. One of them would ask a whole lot of questions and you'd just get it sorted out when a different lawyer would come in and you'd be back to the beginning. It brought DOC and Māori together.
>
> And in the end it brought about He Kaupapa Rangatira – which hasn't been taken up or delivered but was a way of DOC saying we are going to make a serious effort. [63]

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[60] The Wai 480 claim was included in the National Park inquiry.
[61] "Tongariro Taupo Conservation Management Strategy 2002-2012," (Turangi: Department of Conservation / Te Papa Atawhai, 2002), 104.
[62] Coombes, *Tourism Development,* 448.
[63] Interview with former DOC staff member, 18 May, 2007.

The same interviewee described Kingi as "fantastic" in the negotiations. The Wai 480 claim, and the other claims and legal challenges brought by Māori against DOC (and in general against the government) could very usefully be described as a way of giving DOC 'something to lose.' With the imposition of the Tribunal as an external authority on how relationships should be run, DOC took action itself to rework its approach.

These were busy years for the leadership of Ngāti Tūwharetoa. In 1992 their negotiations with the government regarding the bed of Lake Taupō resulted in the lake being re-vested into tribal ownership. The negotiations for the return of the lake were not a part of the Treaty settlement process, but a separate process entered into directly with the government. Four years later, in 1996, the Taupo-nui-a-Tia Management Board was established, comprising four members of the Trust Board and four members appointed by the Minister of Conservation. The Board's mandate is to manage the waters as if they were a reserve for recreation under the *Reserves Act* 1977.

Also in the early 1990s, the Tongariro-Taupō Conservancy began to meet with the Whanganui iwi of Ngāti Rangi, closest to Ruapehu, though there had been a Ngāti Rangi member on the Conservation Board prior to this, from the mid-1980s.[64] The wider relationship began in conflict, when the tribe took out a court injunction against DOC over the use of 1080 poison to control possums in the Ngāti Rangi tribal area.[65] The Ngāti Rangi Trust was set up to liaise with public agencies at around this time, and through debate on the 1080 issue, and other issues such as the upgrading of walking tracks to Lake Rotokura, a relationship was developed between DOC and Ngāti Rangi.[66] From the mid 1990s the Ngāti Rangi Trust began sub-committee meetings with DOC.[67]

In 1995, DOC approached the Ngāti Rangi Trust with a proposal to establish a 'mainland island' in the Rangataua forest, on the south-western slopes of Ruapehu, just outside the national park. Discussions over this project led to the establishment of a communications protocol between the Trust and DOC. A Memorandum of Agreement (Memorandum) was signed in 1996, guiding the "joint management" of "Rangataua Mainland Island Project," which is now known as the Karioi Rāhui. The Memorandum sets out ten protocols for the relationship, including statements that the project will not

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[64] Matiu Mareikura. Brief of Evidence of Paul Green, #H3, paragraph 5.1, 9.
[65] Interview with Tongariro-Taupō Conservator, March 4, 2008; Brief of Evidence of Keith Wood, #A64, paragraph 52, 10-1.
[66] Brief of Evidence of Keith Wood, #A64, paragraph 52, 10-1.
[67] Toni Waho, at Ngāti Rangi Trust meeting, 25 August 2004, cited in Bayley and Derby, *Tongariro National Park Management*, 24.

be used as a vehicle for facilitating Crown or iwi political goals (i.e. the Crown's proposal to add the land to the national park, or any separate issues Ngāti Rangi might have with DOC). The Memorandum also established a joint committee, made up of three members of Ngāti Rangi, and three members of DOC, to manage the forest.[68] The Karioi Rāhui is another example of positive change resulting from negotiations that began in a conflict situation. In an interview Paul Green noted that "[c]ourt brings it to a head sometimes." This is not always the case, however. The centennial is one counterexample of changes being made without any court process. The lahar planning negotiations are another example of important issues being dealt with outside the proceedings of a court. The lahar management issue provides insights into how consultation functioned over an eleven year period and will be reviewed at some length here.

The Lahar

Ruapehu erupted in 1995 and 1996, creating a wall of ash deposits, or a tephra dam, at the outlet of the Crater Lake. When a tephra dam is created, at some point after the lake has refilled, the dam will burst, and a cascade of water and debris, known as a lahar, will pour down the mountain. After the eruptions DOC and other agencies began assessing the risks and planning for their mitigation. The issue of lahars is particularly sensitive in New Zealand, as a Ruapehu lahar on Christmas Eve 1953 swept away a train bridge at Tangiwai, causing a crash that killed 151 people. The pending lahar was also an extremely complex management issue given the large number of stakeholders and response agencies involved – a big lahar on the mountain threatens not only the railway line and mountain users, but could reach State Highway One, damage the hydroelectricity infrastructure on the mountain, or harm the army base at Rangipō. The main, but by no means the only, agencies involved included DOC, the Police, the Ruapehu District Council, Geological and Nuclear Sciences (a Crown Research Institute), Horizons (the Regional Council), the Army, Transpower (the State Owned Enterprise that runs the national grid), Tranzrail (the company that ran the train services across New Zealand for most of the lahar-planning period), Transit NZ (until recently the Crown entity in charge of the road network), and Genesis Energy (a State Owned Enterprise established in 1999 that operates the Tongariro Power Scheme).

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[68] Memorandum of Agreement between the Department of Conservation (Tongariro/Taupo Conservancy) and the Ngāti Rangi Trust, signed December 5, 1996, Wai 1130, #A78.

From very early on, the planning process involved consultation with both Tūwharetoa and Ngāti Rangi representatives. The issue was discussed first at the Conservation Board in 1996, with Tumu Te Heuheu and Matiu Mareikura (from Ngāti Rangi), present. There were public meetings, and in 1997 at a media event for the release of the Scientific Stability Assessment, the then Minister for Conservation (the National Party's Nick Smith) was taken up the mountain to look at the crater lake, with Tumu Te Heuheu and Matiu Mareikura again present. The Minister met iwi representatives after the Crater Lake viewing, and handed them copies of the Assessment. One interviewee saw this as a symbolic statement that discussion was going to continue on the issue at a high level.[69]

The positions of the many agencies involved in discussions can be split into two broad categories. Some proposed intervention of some sort at the Crater Lake to try to avoid or reduce a lahar; others argued that it was better to allow the lahar to happen and to take other steps to mitigate risk. Of the forty-five submissions to the DOC-led Assessment of Environmental Effects, most were against interference at the Crater Lake.[70] The Ruapehu District Council, responsible for civil defence on the mountain, and legally accountable for both the lives that the lahar might claim, and the costs of risk mitigation, was among those agencies that favoured intervention at the lake.

The Ngāti Rangi Trust was the first to issue a position paper, describing the lahar as a natural process that should not be disturbed, stating their particular opposition to bulldozing at the Crater Lake, and noting that alarm system technology existed to warn the public of an impending lahar.[71] Ngāti Hikairo, the hapū of Ngāti Tūwharetoa based closest to the mountains, supported the Ngāti Rangi Trust's approach. The Tūwharetoa Māori Trust Board, while advocating as little interference as possible, was worried about the possible impacts of a large lahar on Lake Taupō and the Tongariro River. Due to this risk, they supported the construction of a bund protecting the river and lake.[72]

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[69] Interview with DOC staff member, July 29, 2008.
[70] "Mt Ruapehu Crater Lake Lahar Threat Response - Lahar risk assessment," http://www.doc.govt.nz/publications/about-doc/news/issues/mt-ruapehu-crater-lake-lahar-threat-response/lahar-risk-assessment/
[71] "Mt Ruapehu Crater Lake Lahar Threat Response - Ngāti Rangi position statement," http://www.doc.govt.nz/publications/about-doc/news/issues/mt-ruapehu-crater-lake-lahar-threat-response/ngati-rangi-position-statement/
[72] Bayley and Derby, *Tongariro National Park Management*, 26.

DOC's own position was against intervention, based on their own policy to allow, as much as possible, natural processes to continue in national parks.[73] DOC's final report, taking stakeholder perspectives into account, recommended to the Minister that an alarm system and protective bund be installed on the mountain.[74] In May 2000 the new Labour-Alliance coalition Government's Minister of Conservation, Sandra Lee, accepted DOC's recommendations. Another review of the options took place at the request of the Ruapehu District Council, and in 2004 the then Minister of Conservation, Chris Carter, reiterated the Government's policy not to intervene at the Crater Lake.[75] Neither minister's media releases made significant mention of Māori submissions. Lee's 2000 release noted the fact that the Ngāti Rangi and Tūwharetoa trust boards had made submissions. The press release also included the executive summary of the environmental and risk assessment, which went into more detail about the Maori cultural values that had to be taken into account in deciding what to do about the risk of lahar.[76] Her 2001 release named the key reason for her decision as being a concern for the safety of workers at the Crater Lake if engineering intervention was pursued. She added that intervention would have been against the *National Parks Act*, the Tongariro National Park Management Plan, and the World Heritage Convention. With regard to the Convention she mentioned only the "high natural values of the crater."[77] Carter's 2004 release argued that the alarm system was the best way to manage the risk to human life.[78] The Department of Conservation's website, on the other hand, listed cultural concerns as one of the most important factors in the decision to allow the lahar to run its course.[79] It is hard to know whether the omission of Maori cultural considerations from the ministers' releases was a measure of the relative lack of priority of these concerns in their decisions, or whether it indicated the Ministers' caution about

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[73] Harry Keys and Paul Green, "The Crater Lake Issue - a Management Dilemma," *Thepra: Earth Movements* 19(2002), http://www.doc.govt.nz/upload/documents/about-doc/news/issues/crater-lake-mgt-dilemma.pdf.

[74] DOC, "Mt Ruapehu Crater Lake Lahar Threat Response: Lahar Risk Assessment, Mitigation, Recommendations and Alarm System," November 2006, http://www.doc.govt.nz/upload/documents/about-doc/news/issues/Laharfactsheet2.pdf.

[75] Chris Carter, Minister of Conservation, "Government Reviews and Rejects Ruapehu Intervention," Media Release 9 March 2004, http://www.beehive.govt.nz/release/government+reviews+and+rejects+ruapehu+intervention.

[76] Sandra Lee, Minister of Conservation, "Conservation Minister Releases Report on Managing Hazards From Future Ruapehu Crater Lake Lahars," Media Release 8 May 2000, http://www.beehive.govt.nz/node/7381

[77] Sandra Lee, Minister of Conservation, "Lee satisfied with Ruapehu lahar risk response management," Media Release 18 December 2001,.http://www.beehive.govt.nz/release/lee+satisfied+ruapehu+lahar+risk+response+management.

[78] Chris Carter, "Government Reviews and Rejects Ruapehu Intervention."

[79] DOC "Mt Ruapehu Crater Lake Lahar Threat Response: Whangaehu River Bund, Crater Rim Engineering, World Heritage Status," November 2006. http://www.doc.govt.nz/upload/documents/about-doc/news/issues/Laharfactsheet3.pdf.

communicating regard for Māori interests when addressing the general public. Many Pākehā are hostile to the idea that Māori interests have a greater sway than the interests of other New Zealanders, an issue that had been inflamed by the Orewa Speech in early 2004. Government departments were then under particularly heavy political pressure not to be seen to be 'privileging' Māori interests.

The Conservancy staff had to attend to these Pākehā sensitivities while also accommodating the prominent Māori political players at the local (and, in the case of Ngāti Tūwharetoa, national) level. DOC had received criticism in the media for allegedly kowtowing to Māori opinion on the issue, and had to refute the accusation they were ceding their decision-making authority to one particular 'stakeholder.' At the same DOC had to show that it respected Māori opinions and interests.

The role of Tongariro's World Heritage status in park management was highlighted in the public records of DOC's reasoning about how best to deal with the lahar threat. The award of World Heritage status had been based partly on the credibility of DOC's claim that its National Park Management Plan would preserve the Park from interference with natural processes. The objections of Māori to the use of bulldozers at the crater lake was congruent with DOC's commitment to limit interference in natural environmental processes in the park, but it is not clear how much of DOC's opposition to bulldozing at the crater was based on respect for Māori values. The possibility of bulldozing at the peak of the mountain, the area of highest spiritual significance to Māori, also raised questions about the significance of Tongariro's World Heritage listing for its intangible cultural values. DOC liaised with the World Heritage Centre on the issue. The then Director of World Heritage, Bernd von Droste, was taken up to the crater lake in 1998.[80] DOC was concerned about the possibility that bulldozing at the crater lake might lead to the declaration of Tongariro on the World Heritage in Danger list. This was one of the arguments DOC put to the Minister of Conservation.[81]

The tephra dam burst on the 18th of March, 2007; the alarm system was triggered and all agencies sprang into their prearranged action. State Highway One was closed, trains were stopped, text messages were sent to everyone who had subscribed for information, and warnings went out on the mountain. The bund held, and the lahar passed just under the level of the lifted and reinforced Tangiwai Bridge, although the memorial to the

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[80] Interview with DOC staff member, July 29, 2008.
[81] Ibid.

1953 disaster was swept away. Helicopters filmed the flow down the mountain and the national news covered the 'clockwork' lahar. No-one was injured or killed. The success of the alarm system and alert procedures vindicated the stances taken by both DOC and Māori. The continuous negotiations that went on throughout the years as plans and developments changed, and the general agreement between DOC and Māori groups as to the right course of action, is further evidence that these relationships often function well.

The Ruapehu lahar planning process was an extremely complex and lengthy management issue involving many different stakeholders, and the threat of potential loss of life. It shows the level of difficulty DOC sometimes faces in juggling different interests and managing its own reputation while making decisions. DOC's relatively successful negotiations with Māori, *vis-à-vis* the other stakeholders in the issue, shows again that DOC and Māori can be effective allies in environmental management debates.

Summary of the period 1970-2006 at Tongariro

During the years 1970-2006 a genuine relationship was formed between DOC and the Tūwharetoa leadership, and slightly later with members of Ngāti Rangi. The relationships were not always easy, and developed over time as the parties negotiated. There was a substantial measure of goodwill on all sides. There were limits to how well Māori interests could be accommodated in the management of the national park, given the many restrictions on the use and development of national park lands, and the management structure in which DOC makes final decisions over those lands.

The period 1970-2006 in the inquiry

The next section examines the submissions made by individuals and claimant groups in relation to the period 1970-2007. Neither side in the Tribunal inquiry acknowledged this period as one of learning and transition in relationships, or the critically important role that institutional factors played in inhibiting change. This is largely because there is nothing to be gained on either side by describing it as such in the claim. Crown submissions tend to portray this period as one in which Māori were adequately engaged in park management decisions, and defend specific DOC actions and the wider policies behind them. The claimant submissions, on the other hand, criticise DOC's management of the issues and events of these years.

There was a predominant focus on the actions and motivations of particular Crown and claimant actors, with little analysis of the contexts in which they were operating. The claimant focus is on Crown actors, despite the fact that many claimant parties, at points in their submissions, identified legislative and policy restrictions as being the key issue in the relationship during this period. As with Crown agents, the roles of Māori actors were required to conform to key narratives; the Crown portrayed Māori figures as informed and agreeable to Crown policies and actions, and claimants portrayed them as heroic resisters of government trickery, sometimes forced by the Crown into taking positions against tribal interests. The behaviour of both Crown and Māori actors tended to lack context in the debate, and there was little acknowledgment of the political pressures these actors faced at the time.

The reason for this can be traced to the legislation under which the Tribunal operates. Its brief is to establish whether there have been Crown acts or omissions which have breached the principles of the Treaty of Waitangi. The definition of those principles also adds incentive to focus on actors rather than institutions, particularly the principles of good faith and active protection (though the principle of partnership can be, and is, used to discuss institutional issues). The focus on acts and omissions is the key feature of Tribunal inquiries leading to the lack of attention on background contextual factors. This caused particular tensions in the inquiry, and the park relationship, in regard to this period of history. This was chiefly because the people who were involved in these events are often still involved in park management. Accusations of breaches of the Treaty of Waitangi were levelled at Crown agents who are still alive or still in living memory.

There was little commissioned research on this period, which is noteworthy in itself. The Tribunal commissioned a scoping report into the period from 1980 to 2004, with the purpose of identifying if any Treaty breaches had occurred during these years and if so whether they were extensive enough to warrant further research. With the provisos that a) their report was not comprehensive, and b) if claimant evidence seemed to warrant further research this should be attended to, Nicholas Bayley and Mark Derby wrote that:

> …it is felt that a further report is not necessary at this stage. Throughout the period, Māori and DoC in Tongariro National Park have confronted a number of broad issues which this report has identified and commented on, and have put in place plans and strategies to deal with them. Both groups would appear to be reasonably content that their concerns have

> been listened to, and that what has been arrived at is a fair attempt at workable solutions.[82]

The claimant evidence has not upheld this conclusion, but, despite this, a more extensive report was not commissioned.

The debate in the inquiry regarding DOC's handling of the lahar threat is a good example of the ways in which both sides exaggerated events to fit into particular narratives of failure or success. The lahar planning was widely regarded as one of the more positive interactions, and this was acknowledged in the inquiry. The claimants tended to downplay this success, however, by arguing that the chief reason the negotiations went well was the coincidence of both Māori and DOC being in agreement about the best course of action. Claimants accused DOC of taking too much credit for the success of the consultation process. The Crown portrayed the lahar planning process as an unmitigated success, and provided a number of statements emphasising how influential Māori perspectives and input had been in their decision-making processes. Comments made in contexts outside the inquiry, however, stand in awkward contrast to these statements.

In the Tūwharetoa closing submissions, the argument was made that the tribe's views would only be taken into account if DOC also held the same position of their own accord:

> In effect, in order to achieve effective outcomes Ngati Tuwharetoa are reliant on DoC to adopt the same position as them regarding particular issues of concern in the Park. Evidence was given that demonstrated on particular issues (Crater Lake, extension of skifields in recent years) there has been agreement. However, the real point is that if DoC does not support Tuwharetoa's views, then Tuwharetoa are unable to enforce their position.[83]

In an individual submission, Tyronne Smith, who has worked closely with DOC, argued that although the lahar consultation was positive, the main reason the decision not to intervene was made was due to pressure against intervention from the World Heritage Committee, with the short term nature of intervention at the Crater Lake and potential danger to workers also being greater concerns to DOC than Māori opinion.[84]

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[82] Bayley and Derby, *Tongariro National Park Management*, 47.
[83] Closing Submissions of Ngati Tuwharetoa, #3.3.43, paragraph 8.104, 197.
[84] Brief of Evidence of Tyronne Smith, #G24, paragraph 32, 10.

In his submission to the inquiry, Paul Green elaborated that he also felt DOC had a responsibility to defend Māori, as well as DOC, from the allegation it was a Māori decision alone to allow the lahar to run its course:

> … Ngati Rangi made their position very clear, namely, that there should be no intervention at the Crater rim. Although a Ngati Tuwharetoa decision followed, they did not commit to a final position as early as Ngati Rangi because they wanted to understand the potential impact of a lahar on Turangi and the trout fishery. These views, and the special relationship between tangata whenua and the peaks of Ruapehu, were a very important part of decision making by the Department. The Department has however, been careful not to 'blame' iwi for decisions not to 'intervene' at the Crater as there were other concerns about such work within the National Park.[85]

The comments made to Bayley and Derby suggested that the way DOC handled the lahar issue had been acceptable to local Māori.

> The decisions taken here, while not solely in response to Māori concerns, nevertheless gave consideration of those concerns, and the outcome was acceptable from the point of view of the tangata whenua, as evidenced through the interviews.[86]

One of the interviewees quoted by Bayley and Derby was Paranapa Otimi, a member of the Trust Board, who made a comment that the lahar planning negotiations were positive:

> Napa Otimi stated: 'The lahar issue has gone well. Ngāti Rangi and Tūwharetoa said the crater lake should not be touched. We regard it as a traditional burial ground. Nature should be left to take its course. DoC supported us and have maintained that position.' [87]

In Ngāti Rangi's closing submissions they made a general comment that Ngāti Rangi had tried to work with DOC on a number of issues, including lahar mitigation proposals, but "were never given full credit for their kōrero and their interests were put to the side."[88] Two Ngāti Rangi individuals' submissions mentioned the lahar, and both were fairly positive. Keith Wood noted that "significant DOC consultation was initiated right from the start which provided good background options for mitigation" but criticised DOC for an incident in which DOC allowed snowcats in the Crater Lake area for research purposes and then falsely claimed that local iwi had consented to the

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[85] Brief of Evidence of Paul Montague Green, Tongariro Taupo Conservator, on behalf of the Department of Conservation, Wai 1130, #H3 , November 10, 2006, paragraph 22.1, 32-3.
[86] Bayley and Derby, *Tongariro National Park Management,* 26.
[87] Ibid., 27.
[88] Closing Submissions on Behalf of Ngāti Rangi, #3.3.33, paragraph 7.39, 63.

procedure.[89] Another individual Ngāti Rangi submission focused its criticism on the Ruapehu District Council (RDC)

> People were concerned about the impact of having another Tangiwai disaster. Destroying the ash wall wouldn't solve all the problems, but RDC chose to oppose our stance, even after a long process with Tūwharetoa and DOC supporting us. They continued to push their stance with the support of the media which caused concern for the community and undermined our collective stance with DOC and Tūwharetoa.[90]

The same submission alleged that the Ruapehu District Council had made a deliberate attempt to persuade other tribes in the area to go against the Ngāti Rangi position.[91] This is due to another strange feature of Tribunal claims – the protagonist of a Treaty breach is ideally a department or individual associated with central, rather than local government. So although DOC and Māori were in many ways allies in the negotiations regarding the lahar, most of the focus in the inquiry was still on the faults of DOC, rather than the role of the Ruapehu District Council in actively opposing the position of most local Māori groups.

Both claimant and Crown submissions regarding the lahar can be interestingly compared with comments on the lahar made in fora other than the Tribunal. The periodic report to the World Heritage Committee on Tongariro, written by the Conservator, stated that "[c]ultural perspectives were a key issue in the analysis of the Crater Lake issue."[92] At a World Heritage Conference in 2003 the paramount chief of Ngāti Tūwharetoa, Tumu Te Heuheu, praised DOC's handling of the lahar issue:

> … there is a very close relationship between the tribe and the Department, both as manager of Tongariro National Park and as the State Party representative to the *World Heritage Convention*. This relationship has been vital in the management of risks to public safety from a predicted lahar (mudflow) from the crater lake of an active volcano, Ruapehu, at the centre of the National Park. The state agency's preference is to address the public safety risks without interfering with natural processes, letting them occur when their time is due.
>
> This has not met with universal approval from those who favour a mechanistic solution, but the state agency's approach has the concurrence of Tuwharetoa.[93]

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[89] Brief of Evidence of Keith Wood, #A64, paragraphs 56-7, 11-12.
[90] Brief of Evidence of Che Philip Wilson, Wai 1130, #A61, February 10, 2006, paragraph 104, 16-7.
[91] Ibid., paragraph 106, 17.
[92] Paul Green, "Periodic Reporting on the Application of the World Heritage Convention: Tongariro National Park," (Wellington: Department of Conservation, 2002), 11.
[93] Tumu Te Heuheu, "Role of the Maori in New Zealand's World Heritage Management," *World Heritage Series no.13 - Linking Universal and Local Values: Managing a Sustainable Future for World Heritage*(2004), http://whc.unesco.org/en/series/13/.

In this forum Tumu Te Heuheu described the decision not to intervene at the lake as DOC's but as having the agreement of Ngāti Tūwharetoa. More importantly, he described it positively, as an example of DOC's close relationship with the tribe. A Ngāti Rangi interviewee also indicated DOC was running the show but, on the whole, doing it reasonably well:

> DOC came to us early and asked us our perspective. …There were one or two points where they didn't consult with us when they should have – they knew we wouldn't approve and they went and did them anyway – and full credit to [name of DOC staff member] who came and got a grilling from us, about the decision they made … But that was probably the only blemish.[94]

The lahar is an example of a complex negotiation process that was managed well. This has been acknowledged by members of both parties outside of the inquiry context. In the hearings, however, claimants were loath to acknowledge that the interaction had been positive, and the Crown went to great effort to emphasise the role of Māori in reaching the decision not to intervene, while underplaying it in other contexts.

Another set of comments expressed the claimants' concern with the fact that in order to achieve positive developments in the relationship they had to threaten or proceed with legal intervention against DOC. Examples of this were comments over the 1080 drop on Ngāti Rangi land which led to a closer relationship with DOC, and the Tribunal claim on the draft Conservation Management Strategy, which led to a new set of Treaty principles and a (yet to be implemented) strategy for interaction. In an interview, the 1080 drop was identified by the Conservator, and by one of the Ngāti Rangi claimants in a submission, as the beginning of the relationship with Ngāti Rangi.[95] The same claimant argued that the process of negotiating through conflict should not be the way this progress is achieved:

> My point here is that we shouldn't have to go through this process to be involved in the management of our maunga and wider Ngāti Rangi lands managed by DOC.[96]

The Ngāti Tūwharetoa closing submissions also made a similar remark about the Tribunal claim over the Conservation Management Strategy:

> It was not until the National Park initially failed to obtain World Heritage status due to, inter alia, failure to give cultural values 'prominence' in the

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[94] Interview with member of Ngāti Rangi, July 30, 2008.
[95] Interview with Tongariro-Taupō Conservator, March 4, 2008; Brief of Evidence of Keith Wood, #A64 paragraph 52, 10-11. Wahi taonga means, roughly, 'treasured place'
[96] Brief of Evidence of Keith Wood, #A64, paragraph 64, 13.

> management of the National Park, and later the development of the Tongariro-Taupo Conservation Management Strategy (approved in 2002 following the intervention of the Wai 480 Waitangi Tribunal claim, lodged by Sir Hepi Te Heuheu in 1995), that the first realistic attempt was made to incorporate Maori values and Treaty principles in the management of the National Park.[97]

The comments here argue that it takes the intervention of an external agency, for example the courts, the Tribunal or the World Heritage Committee, for DOC to make substantial changes to the way it works with Māori.

The submissions on the lahar management interactions, the court injunction over the 1080 drop in the Ngāti Rangi rohe, and the Wai 480 Tribunal claim, also show the degree to which the focus of historical accounts is the motivations of the actors, particularly the Crown actors, involved in these events. The fact that DOC supported the Māori position on the lahar was not enough – the reasons for which they supported the Māori position were also important. The comments on the 1080 drop and the Wai 480 claim criticise DOC for not being motivated to improve relationship processes of their own accord, and acting only when they were forced to do so. The motivations of Māori in these events were also the subject of much discussion. The role of Sir Hepi Te Heuheu, the paramount chief of Ngāti Tūwharetoa from 1944 until his death in 1997, was heavily debated. His role in the Centennial celebrations is an example of the ways in which both sides in the inquiry tried to use the records of Sir Hepi's statements to argue their own cases to the Tribunal.

The Ngāti Tūwharetoa closing submissions provide a transcript of Sir Hepi's speech at the centennial, and offer the following analysis:

> "And so it was not given" – a plain English statement to the Crown that 'Gift' did not mean 'giving' anything away, but rather a handing over to be looked after by all people. The plain English meaning of "all people" including naturally Ngati Tuwharetoa, something that has been overlooked by the Crown in the years following 1887.[98]

Two of the individual Tūwharetoa submissions mention the Centennial. The person who wrote at the greatest length about the Centennial celebrations was the Trust Board secretary of the time, Stephen Asher. Asher recalled the debate among the Trust Board members, mainly elders, as to whether or not it was appropriate for Tūwharetoa to participate in the celebrations:

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[97] Closing Submissions of Ngati Tuwharetoa, #3.3.43, paragraph 8.135.2, 206.
[98] Closing Submissions of Ngati Tuwharetoa, #3.3.43, paragraph 7.183, 154.

> They were aware that celebration of the centennial of "the gift" was likely to be controversial and not understood or accepted by our people, and questions would be raised about Ngati Tuwharetoa's participation. I recall during their debate hearing the Board members expressing doubt in regard to "the gift" and I believe they knew it was a myth.[99]

Asher also noted that at a meeting of the iwi convened by the Trust Board at Hīrangi marae, some of the younger tribal members had questioned what and why they were celebrating. Asher described it as Sir Hepi's decision to allow and participate in the celebrations:

> However, Sir Hepi said that he wanted the centennial celebration to go ahead and for Ngati Tuwharetoa to participate, not to celebrate the "gift", but to demonstrate and highlight the fact that the mountains were still tapu and sacrosanct to us, and we still regarded them as belonging to us, our taonga. He wanted the celebration to show that the Maunga and Ngāti Tūwharetoa were indivisible and one. He said that we should participate to mark our continuing connection and close relationship with the mountains, to make sure that everyone including the Crown understood that Ngati Tuwharetoa was still very much a part of the mountains and were not going away.[100]

The view that participation in the ceremony was decided upon by Sir Hepi was corroborated by another of the Tūwharetoa submissions.[101] Stephen Asher's description reconciles the Ngāti Tūwharetoa position that the 'gift' was never intended as such and that the Crown had tricked Horonuku into signing away his heritage, with the fact that Tūwharetoa had participated in the celebrations commemorating the event in 1987.

There was little said about the Centennial on the Crown side of the inquiry. The closing submissions do not mention the ceremony or the planning for it. Paul Green's submission noted only that Ngati Tūwharetoa had been invited to participate in the renovations of the Visitor Centre for the occasion, and a Maori architect was funded by DOC to undertake some of the work. Green also noted the involvement of Tūwharetoa in the celebration planning and event itself.[102] Sir Hepi's words at the time of the Centennial have been used by the Crown in the inquiry, however. The Crown closing submissions quote a passage from Sir Hepi's introduction in Craig Potton's book *Tongariro: A Sacred Gift* (which was commissioned for the Centennial). A key part of the quoted passage is:

> This matter of tapu is important. We want to see people enjoy the mountain but we do not want it desecrated. Some of our people feel more

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[99] Evidence of Stephen Asher, #G38, paragraphs 12-13, 5-6.
[100] Ibid. "Hui-a-Iwi" means "Meeting of Iwi," in this case a meeting of Ngāti Tūwharetoa.
[101] Evidence of George Asher, #G52, paragraph 11.7, 24.
[102] Brief of Evidence of Paul Green, #H3, paragraph 18.1, 29.

> strongly than others on this. Some would have no commercialism on the mountains at all, to others it is no great matter because it is Pakeha anyway. And yes, the tapu is still there, but it is no longer the kind that kills. Now the gift is a Maori-Pakeha thing, and we want it to stay that way.[103]

The Crown closing submissions go on to add that:

> A consistent theme in this statement (and others made on behalf of Tuwharetoa) from the time of the gift is that the gift was inclusive. It is a "Maori-Pakeha" thing, or a three-way bond between land, Maori and Pakeha. The tapu remains and the mountains must be respected, but it is a different kind of tapu. Access to the mountains was always contemplated, but there is ambivalence and opposition to commercial or intrusive development[104]

Here the Crown has used Sir Hepi's words to argue their own case: that in the past Tūwharetoa have taken a more inclusive stance. This is meant to undermine the Tūwharetoa arguments used in the inquiry that are more exclusive of Crown (and Pākehā) interests in the mountains. There are themes of authenticity in relation to tradition here that are not fully drawn out by the Crown lawyers, but are implicit in their use of juxtaposing older comments, such as Sir Hepi's, with the more recent comments in the group and individual submissions from Tūwharetoa claimants. The more direct point being pushed here by the Crown lawyers is that there has been historic Tūwharetoa acceptance of recreation on the mountains.

The intended meaning of Sir Hepi's words, recorded on tape and paper, has been contested during the inquiry, with both sides trying to claim him as an historical ally. This caused tensions in the relationship during the time of the inquiry. Sir Hepi was and remains an important figure to Ngāti Tūwharetoa and a close relation of several of the key claimants. Some of the tribal members became upset at the Crown use of Sir Hepi's comments to support the government's case, feeling that the words of their former leader and relative were being used against them. In one incident the Conservator withdrew a sentence in his original submission because it had caused such offence to the Tūwharetoa claimants.[105] This sentence stated "[i]n fact I recall Sir Hepi and Brian Jones being advocates for helicopter skiing from the Crater Lake area when this issue

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[103] Potton, *Tongariro: A Sacred Gift*, 168, cited in Closing Submissions of the Crown, "Chapter Six," paragraph 106, 32. (In my copy of the Crown's closing submissions each chapter starts with a new paragraph 1, page 1).
[104] Closing Submissions of the Crown, "Chapter Six," paragraph 107, 33.
[105] Draft Transcript of National Park District Inquiry Extra Evidential Day, Wai 1130, #4.1.13, (Waitangi Tribunal Offices, Wellington, February 14, 2007), 3.

became a contentious one in 1977."[106] Part of the reason for the consternation caused by the sentence was that an aspect of the Ngāti Tūwharetoa case was that development on the mountains, exemplified by commercial activities such as skiing, is contrary to Tūwharetoa values.[107]

After the 1960s interaction between Māori and Pākehā increased, due to the post-war movement of Māori to the cities. This led to greater closeness and greater conflict. Small adjustments to legislation have worked as footholds for Māori to take claims to court, often winning more substantial changes. In conservation matters, shared interests saw Māori and environmentalists working together in the 1970s and early 1980s. This relationship became more complicated from the late 1980s onwards as the Department of Conservation took over as the key voice in environmental advocacy, with interests in land and resources often opposed to Māori aspirations. The new policies to consult the public in the process of decision making, and to give effect to Treaty principles have required liaison between DOC and local Māori groups. This led to the development of personal relationships between DOC staff and Māori leaders, leading to much richer and more complex relationships.

These were important changes, but they were limited by the different expectations Māori and DOC brought to this new relationship. DOC staff, encouraged by the co-operation with Māori in the 1970s and early eighties, thought that Māori were going to be uncomplicated allies in the quest to save the natural environment. Māori hoped that the promises to uphold the Treaty of Waitangi would finally see their rights to own and manage their tribal resources recognised. The goodwill with which both parties entered the relationship at Tongariro, and the skill with which Māori leaders have used the courts and the Tribunal, have stood the parties in good stead as they have negotiated with each other, but the differences in expectations regarding their relationship have continued to cause difficulties in their attempts to work together. The claim has exacerbated this problem, but may help to address it in the longer term.

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[106] Brief of Evidence of Paul Green, #H3, paragraph 5.2, 9. Green's evidence was then amended to remove the sentence, and filed separately as document #H3(a).
[107] Closing Submissions of Ngati Tuwharetoa, #3.3.43, paragraphs 8.54-8.79, 181-189.

Chapter Eight: The Time of the Inquiry

This chapter is about the period of the Tribunal inquiry itself, especially during the hearings, 2006-07, and my interview period of 2007-08. I look at the way the inquiry process shaped the debate over contemporary relationship issues. Tongariro's legislation, policy and practice are likely to change as a result of the future settlement, and the submissions regarding these topics are consequently highly strategic. Claimant submissions both criticised the workings of the current relationship model, and posited new models. Crown submissions tended to defend the status quo. The inquiry process distorted these debates, making them combative, concerned with pinning the blame on Crown witnesses (or exonerating Crown witnesses from blame), and ignoring the role of the wider public, interest groups and the media.

I elaborate on my argument that the key problems in the DOC-Māori relationship are to do with the limitations of consultation as a means of satisfying Māori expectations about the relationship. The fact that claims focus on acts and omissions, rather than policies and structures, obscured this. If the participants see the roles played in the Tribunal as indicative of the relationship in all contexts, the claim's impact on park management will be negative. If they see it those roles as specific to the claim process then the claim's impact will be minimal.

There were no research reports in the claim that looked at the contemporary relationship in policy or practice, so the main sources for this chapter are again the individual and group submissions to the inquiry. In this chapter I also draw from the submissions of those claimants who do not have an established relationship with DOC. Claimant individuals and groups differ in the ways that they depict the relationship between claimants and 'the Crown.' The submissions from individuals, in particular those who are closely involved in liaison between DOC and Māori, bring back some complexity into these relationships and identities. Individual claimants who worked closely with DOC were generally more positive about the relationship, and more likely to blame DOC staff at headquarters, and the Crown Law Office, for difficulties in the relationship. Claimants from groups who did not have an established relationship with DOC were more likely to blame local DOC staff, and other Māori groups for the problems they faced. The group submissions from Ngāti Rangi and Tūwharetoa claimants, squared blame on the Crown.

Among Ngāti Rangi and Tūwharetoa claimants there was a substantial degree of agreement over the strengths of, and more predominantly, the problems with the contemporary state of affairs. The overarching narrative in the group closing submissions of claimants was of Crown failure to provide for Māori interests and cultural values. Policy and practice were criticised alike, although section four of the *Conservation Act*, specifying that the administration of the Act must give effect to the principles of the Treaty of Waitangi, was held up as a good rule that is not fully followed. The group closing submissions tended not to distinguish separate interests among Crown agencies and agents, nor acknowledge the complexities in these relationships that were identified by some individual claimants.

In the hearings

Throughout the hearings, on most of the issues discussed, there was a clear difference of opinion between the Crown and Māori groups and individuals as to what constitutes an acceptable level of Māori involvement in departmental decision-making. Essentially, claimants argued that any involvement in which they do not have a veto over decisions is inadequate. Crown counsel and representatives, however, argued that DOC actions in treating Māori with respect, were enough to meet the Treaty obligations in their policy and guiding legislation. This difference of perspective can be seen in the following exchange between Karen Feint (KF), counsel for Ngati Tuwharetoa, and Paul Green (PG).

> KF: …the ethos of the gift was to create a relationship between Tuwharetoa and the Crown which would enable both to protect and look after and respect the mountains. That can't presently occur given the current state of the legislation can it?
>
> PG: I think it can.
>
> KF: Well how can it when… DoC is charged with the responsibility for managing the National Park?
>
> PG: Yes DoC is delegated under the legislation in decision making but as I've outlined the views of Tuwharetoa and other iwi towards their cultural values etc are taken very seriously.
>
> KF: But in effect Tuwharetoa are reliant on DoC adopting the same position with respect to particular issues of concern in the park and if DoC doesn't support Tuwharetoa's view, if you have a different view, then Tuwharetoa are not able to enforce their position are they?

PG: That's true.[1]

The claimant debate around consultation involved both contesting the validity of consultation as an appropriate means of Māori involvement, and criticising the way consultation was carried out.

One of the Ngāti Rangi claimants also stressed that the word 'partnership.' for them meant sharing control, and did not describe the relationship Ngāti Rangi had with DOC:

> Our DOC co-management partners may think these comments are harsh but in our opinion the relationship has only achieved about 30% of the journey … I emphasise the concept of 'co-management' because this has also been a concept that has evolved recently to replace "partnership." Maybe "partnership" means sharing control whilst "co-management" only means sharing management of a resource with control kept absolute and some place else.[2]

Another claimant, from a group that did not have an established relationship with DOC, argued that the relationship model should be one in which Māori had full ownership of the park, and employed DOC staff to manage it.

> We aren't saying that we don't want to have relationships with organizations like DoC. We recognize that they have gained valuable expertise mis-managing our whenua, fighting the fight against invading exotic species from foreign shores. We would employ them for this expertise. The relationship is clear. This way, they have to listen to us, or we sack them.[3]

Such issues of appropriate participation in decision-making are usually, in a Tribunal claim, framed in reference to the Treaty principles of "kawanatanga" (the right of the Crown to govern in the interests of all New Zealanders) and "tino rangatiratanga" (the right of Māori to the full authority over their own affairs).[4] The question of how these principles can be balanced has taken up a lot of Tribunal discussion in successive report findings.[5] It is the same discussion that is happening in many settler societies, of how to provide for a measure of indigenous self-government within a wider nation state.

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[1] Draft Transcript of National Park Hearing 8, #4.1.12, 460. Karen Feint is the lawyer for Ngāti Tūwharetoa.
[2] Brief of Evidence of Keith Wood, #A64, paragraph 50, 10.
[3] Brief of Evidence of Matiu Haitana, Wai 1130, #D33, May 5, 2006, paragraph 60, 17. The use of the word 'mismanaging' appears sarcastic, probably intended to remind the Tribunal that although DOC staff have expertise, they have not always used it wisely.
[4] See chapter four page 92. *Tino rangatiratanga* was defined more fully in the Manukau report as 'full authority status and prestige with regard to [Maori] possessions and interests,' see Hayward, "Appendix: Te Tirohanga ō Kawa ki te Tiriti o Waitangi," in ed. Alan Ward, *Rangahaua Whanui*.
[5] Ibid.,, 489.

There was more focus in claimant submissions on the specific issues regarding consultation, than there was about consultation as a relationship model. Some of the key issues were about how DOC chooses which matters to consult on, how often they consult on those matters, and how much time is given to iwi and hapū to respond with their views. There was concern that, although DOC policy states that iwi will be consulted on all matters of 'high impact.' it is DOC that makes the decision whether a particular proposal will be of high or low impact to iwi.[6] There was also particular mention of the last National Park Management Plan, which was the subject of submissions early in the planning process, but a year of further planning and writing ensued with no further consultation.[7] When the draft plan was completed submissions were again asked for, and there is some contention about the amount of time that was given to at least one hapū to prepare their final statement.[8]

Another concern with the way consultation functioned in the conservancy was whether or not DOC was consulting with all the right people, and no-one but the right people. This issue was most often raised by those claimant groups who had never been involved in consultation with staff from the Tongariro/Taupō Conservancy, or had become involved very recently. Their lawyers specifically challenged DOC's procedures for identifying iwi and hapū groups with traditional authority in the area. Richard Boast, counsel for a Whanganui group who have not previously been involved in Tongariro National Park management, asked Paul Green how this process worked:

> RB: … I get the impression from what you have said that this… you developed this understanding kind of in an informal way as issues arise from time to time rather than by any kind of sustained programme that your conservancy runs in terms of informing itself about other groups. I mean is that a fair comment?
>
> PG: No I don't think it is. It's easy for, after you become aware to comment but I mean if you are actually unaware that there's a group who has an expectation that they are involved it's quite hard sometimes for us to identify with that and that's even with having a couple of … managers who are helping us do that so it's not always easy to find the interest of some groups that might have been quite quiet for a few years and are reforming and quite appropriately so. But the point I would like to make is that once we are aware, we want to move on to a useful relationship. So that's one of the positives that's come out of the hearings. It gives us an opportunity.[9]

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[6] Draft Transcript of Extra Evidential Day, #4.1.13, 24.
[7] Ibid., 19.
[8] Ibid.
[9] Ibid., 10.

The identification of Maori groups with traditional authority over lands in the conservancy is part of the responsibilities of the conservancy's Pou Kura Taiao. Considering the number of groups that may be present in conservancy areas, particularly at the top of the North Island, and the complicated claims and cross-claims they may have in different territories, it is a formidable brief for only one or two staff to not only identify but also to visit and consult all these groups. Issues around the resourcing of the Kāhui Kura Taiao system were scarcely raised in hearings, however. This will be discussed in the next section.

Trust boards are usually a clear and easy place to go in order to glean Māori opinion. This can cause its own problems, however. The current Secretary of the Tuwharetoa Maori Trust Board expressed this in his evidence:

> To some extent, the Trust Board gets treated as a 'one stop shop' by the Crown and other agencies because it is easier from their point of view to only deal with one agency, but the Trust Board has no desire to usurp the mana of the hapu and for their part the hapu are very clear that they wish to be directly involved on issues that affect their mana whenua.[10]

Conservation Boards, another formal avenue for gathering Māori views, came under scrutiny in relation to how members are selected. Liana Poutu, the lawyer for Ngāti Rangi, questioned Paul Green on the system of Conservation Board appointments:

> LP: So if other iwi members [aside from Tumu Te Heuheu] are on the Conservation Board it's simply because they have got on through their own personal merits and got through the process of the Minister approving it?
>
> PG: Well I would put it a little bit differently to that because one of the key attributes they will have is their tangata whenua status and what they can contribute as a tangata whenua person given the values of the Park so in the last probably 15 years there has been no less than four tangata whenua representatives on the Board. I think it has been five on one occasion.
>
> LP: So being tangata whenua will be taken into account but it's not, it doesn't guarantee them a position does it?
>
> PG: No that's correct.[11]

This exchange again shows the concern for higher recognition, which would eliminate the need for Māori to rely on governmental generosity in following the 'good faith' guidelines that generally inform DOC's actions towards Māori. Even when ministerial and departmental commitment towards such policies is borne out in practice, as is the

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[10] Evidence of Te Ḥokowhitu A Rakeipoho Taiaroa, Wai 1130, #G45, October 4, 2006, paragraph 10, 2-3.

[11] Draft Transcript of National Park Hearing 8, #4.1.12, 473-474.

case with Māori representation on Conservation Boards, Māori take issue with the fact that this representation is not formally guaranteed.

An interesting aspect of Māori representation on Conservation Boards is the historically low rate of attendance of Māori members. Regarding the infrequent appearance of Sir Hepi Te Heuheu at Conservation Board meetings at the past, the Tūwharetoa lawyer put this suggestion to Paul Green:

> KF: … You say that Sir Hepi Te Heuheu was the lone Tangata Whenua representative on the Conservation Board for many years and only attended meetings infrequently. Can you understand that it's not a very comfortable position for the Ariki to be in, to be the lone Tangata Whenua voice on a board where the other members may not ascribe to his values?
>
> PG: Absolutely.
>
> KF: And that could have been part of the reason that he didn't attend meetings frequently.
>
> PG: I believe it was the main reason.
>
> KF: Is that what he has told you?
>
> PG: No.[12]

Māori do not necessarily have the resources required to respond to all requests to give their perspectives. They receive requests not only from DOC, but also from numerous other governmental and non-governmental bodies in the area. Again, there is a major difference in perspective in operation, where the prevailing government philosophy sees consultation as an opportunity for community groups to have their views heard. Māori, on the other hand, see the submissions they give to DOC as adding value to management by providing advice, and they believe that they should be resourced by government in order to provide this. One claimant put it like this:

> With any resource consent that involves DOC, they do not pay for consultation with tangata whenua (Ngāti Rangi) as it is national policy not to pay for tangata whenua consultation. My argument, that I put to them has been "what is the difference between engaging a consultant to provide expert ecological or engineering advice and tangata whenua providing expert cultural advice?"[13]

DOC's position is difficult: legislation directs it to make sure Māori concerns are heard, so they are potentially in a legal bind if Māori do not have the resources to express those concerns.

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[12] Draft Transcript of National Park Hearing 8, #4.1.12, 466.
[13] Brief of Evidence of Keith Wood, #A64, paragraph 100, 21.

The inquiry raised serious issues concerning current park management. The clear discussion of these concerns, however, is subverted and obstructed by the processes which have come to dominate Tribunal inquiries. The main problems in park management are twofold: firstly, 'consultation' as a model for Māori involvement, and secondly the current status and security of that consultation being a privilege bestowed upon Māori (should they be lucky enough to encounter a generous conservator), rather than an established right. The following paragraph from the Ngāti Tūwharetoa closing submissions summarises this well:

> The 'Conservation General Policy' (2005) and 'General Policy for National Parks' (2005) both have policies on Treaty of Waitangi responsibilities, that amount to little more than encouraging conservancies to develop relationships with tangata whenua, consult them where appropriate, and encourage their participation and involvement in conservation. Official 'policy speak' like this tends to be toothless in practice, unless there are strong local relationships developed on the ground, but even if that is the case Maori remain vulnerable to the goodwill of DoC, able to make progress when their interests coincide, but left without the ability to influence decisions that detrimentally affect their rights.[14]

These issues are to do with current legislation and policy, and decisions regarding them take place at national level. They are not decisions made by local operational staff. Most of the debate, however, has focused on the process of consultation itself, despite the clear identification that the root problem is more fundamental than this. The irony of the situation in the Tongariro-Taupō conservancy is that a local relationship with a good track record has been put in the firing line of a squad that is, in the most part, aiming behind it at national policy and practices. These points will be discussed further in the next section.

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[14] Closing Submissions of Ngati Tuwharetoa, #3.3.43, paragraph 8.99, 196.

Figure 4: Sketch of Tumu Te Heuheu and the Waitangi Tribunal listening to submissions during the closing hearings of the National Park Inquiry at Ohakune School Hall, 12 July, 2007.

The Tribunal process and its effect on this debate

The 'relationship model' between DOC and tangata whenua in Tongariro National park, and more widely in the conservancy, is certain to change in the wake of a Treaty settlement. The level of Māori involvement will rise, and there will be new frameworks to guide interactions. With this certainty in mind, claimant submissions regarding the current state of affairs in park relationships strongly express the inadequacy of today's relationships in order to create greater pressure for change. Crown submissions, on the other hand, emphasise the government's obligation to the wider public, and describe DOC's progress in terms of including Māori in decision-making over the last thirty years, in order to soften the impact of claimant accusations.

Individual submissions express more complexity than group submissions, especially the statements of individuals who are part of the DOC-Māori liaison process. Such individuals noted differing attitudes among different departments, at different levels within a single department, and between individual government workers. Interviews revealed more nuance again. The Conservator's submission, for example, was much more positive about the resourcing of the relationship than his expressed opinion in interviews. This is almost certainly due to pressure from higher levels in DOC and/or advice from Crown Law during the submission-writing process. Regardless of personal opinions, positions must be staked out in the process of a claim. Decisions about what

ground to cede and what ground to fight over tend to be made at higher levels than individual claimants and witnesses. This is not a process to which I had access as a researcher.

Two features of the Tribunal process are most relevant to the debate regarding today's management. Firstly, as described in previous chapters, the Crown-versus-Māori framework of claims treats both parties as if the individuals that constitute them all share the same opinions and act in the same ways. The immense variety in attitudes within 'Crown' and 'claimant' parties is elided in the claims process. Crown and claimant parties are also taken as mutually exclusive, making it very difficult to discuss the highly important role of Māori individuals employed by the government. Secondly, the tendency for claimant arguments to blame the Crown, the whole Crown and nothing but the Crown, ignores other key players and prevents a proper discussion of realistic alternative relationship structures. It also prevents acknowledgement of Crown agents who have fulfilled their roles with integrity, and distracts from the larger argument that the roles themselves are problematic.

There are many problems that arise from the dichotomisation of Crown and Māori parties. The differing roles of Crown actors, and the variety of attitudes even among a single institution like DOC, are fascinating aspects of contemporary (and historical) relationships, which neither side emphasise in inquiries. It is in the interests of the government to present a unitary and positive characterisation of 'the Crown' in the inquiry, and in the interests of claimants to present a unitary and negative characterisation. In the claim, the Department of Conservation was almost invariably referred to as if it were a homogenous unit. Any particular identity DOC might have separately from 'the Crown' more generally was not acknowledged, and individuals were seldom mentioned. A claimant from the Ngāti Tūwharetoa subgroup Ngāti Waewae made a typical quote in this vein:

> …the Crown has used every method in the book to take our land. They've taken it for defence, for a national park, for paying for those damn surveyors, for roads, for power, for prisons even.[15]

The Crown is generally also referred to as if it had a personality, often scheming or malicious:

> Dad told me that the Crown had wanted to get hold of Pihanga Maunga for a while for two reasons. The first reason was that they wanted to make

[15] Brief of evidence of Daniel Winiata Paranihi, Wai 1130, #G30, September 28, 2006, paragraph 39, 9.

> Pihanga a reserve to add to their National Park and the second reason was that they wanted to prevent my dad and his family from milling the timber and accruing money so they couldn't prevent the Crown taking more land to add to the Trout hatchery at Kowhai Flat.[16]

This bunching together of government staff and agencies into one personified entity happens despite the fact, that, as Paul Nadasdy explains, this is not the way locals tend to experience "the state":

> Rather than viewing the state as a thing … we do better to see it as an ideological project, one that confers legitimacy upon the complex constellation of government institutions and processes that have many different (and often contradictory) agendas and interests. As it turns out, this is consistent with how people actually experience state power, since they must deal every day with the competing – sometimes contradictory – interests and agendas of various agents of the state.[17]

This is illustrated in the submissions of those claimants who have worked closely with members of DOC. They distinguish between DOC and other government agencies, between local and headquarters staff, and note the importance of individuals and individual relationships.

> … Local DOC management had difficulty meeting our desire to have full active management once outside the Karioi Rahui project parameters, and National DOC staff would always be evasive whenever we pushed for greater participation. Often we were told that the Crown Law Office would not accept our proposals for greater participation. What we have with DOC at the moment is a relationship rather than a partnership, where DOC and the Crown still exercise absolute control. There is a willingness to make things work on the ground and to come up with workable solutions between Ngāti Rangi and local DOC staff. However, as soon as those solutions get back to the Crown in Wellington, any proposal/solution gets quashed for fear of creating a precedent.[18]

The submission quoted above identifies three sub-groups of 'the Crown': local DOC staff, headquarters staff, and the Crown Law office, and attributes different attitudes to each. Local DOC staff have 'a willingness to make things work.' national DOC staff are 'evasive.' and the Crown Law Office is rumoured to be recalcitrant. Another submission described a healthy relationship between local staff and tangata whenua, which is jeopardised by the policy restraints on their relationship:

> At a local level, there are a lot of dedicated and committed staff and the relationship between the Department and Tangata whenua is quite strong, but due to managers having to abide to national policies created by the

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[16] Brief of evidence of Rangikamutua Henry Downs, Wai 1130, #G40, October 2, 2006, paragraph 26, 5.
[17] Paul Nadasdy, *Hunters and Bureaucrats: Power, Knowledge, and Aboriginal-State Relations in the Southwest Yukon* (Vancouver: University of British Columbia Press, 2003), 4.
[18] Brief of Evidence of Keith Wood, #A64, paragraph 55, 11.

> Crown, that relationship quite often becomes very stretched and strained.[19]

The blame for these constraints is attributed to the generalised Tribunal bogeyman, "the Crown," here distinguished from local government workers. The same claimant also drew a (slight) distinction between the attitudes of DOC and other government departments:

> I consider the differing interpretation of the legislation as being the single biggest stumbling block between Tangata Whenua and the Department and although we generally want to achieve the same result, it is how the Act is applied which seems to be the dilemma. Although I acknowledge that the Department is the foremost Crown Agency in learning/teaching its staff Maori values and philosophy, the gap still exists.[20]

The local conservancy staff did not always come out positively in the submissions that allowed for different attitudes from different government bodies. Among the groups that do not have an established relationship with the Turangi/Taupō staff, some claimants accused local DOC members of unwillingness to engage with them:

> It would be wrong however to categorize the meeting with Paul Green as a consultation. He never really wanted to meet with us. DoC never has … It's a shame that Brian Faucet [sic] had left by then. He was the only one in DoC who had ever shown an interest in talking to Uenuku.[21]

That his conduct was distinguished from Paul Green's by this interviewee is another indication of the perceived importance of individuals and of the relationships between them. It also shows that the relationships between DOC staff and tangata whenua in the area have not been uniform.

The perceived importance of individuals and relationships between individuals was further suggested when some claimant submissions identified staff turnover as inhibiting effective Māori involvement. The salience of individuals is not evident in some claims where the discussion centres upon group attitudes and actions.

> DOC is evolving, and after years of persistent kōrero with Ngāti Rangi we are starting to develop a reasonable relationship. However, we are continually having to mentor and retrain new DOC staff that we work with until they reach a level of vision and understanding to be useful to our partnership.[22]

The tendency to refer to the Crown as a single entity, especially in regard to current concerns, is also evident in submissions by Crown witnesses and counsel. As any

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[19] Brief of Evidence of Tyronne Smith, #G24, paragraph 31, 9.
[20] Ibid., paragraph 20, 6.
[21] Brief of Evidence of Rangi Bristol, #D40, paragraph 12, 5, paragraph 17, 6.
[22] Brief of Evidence of Keith Wood, #A64, paragraph 63, 13.

Crown agent's behaviour can be attributed to 'the Crown.' it makes sense for Crown submissions to describe those agents as working co-operatively together for a common good:

> There appears to be a relatively high degree of consensus between DOC and tangata whenua when it comes to conservation values and getting the work done on the ground.[23]

Māori groups also have much to gain from presenting a single face in the debate, despite the diversity between and within tribal groups. In practice it is seldom possible for claimants to work fully co-operatively, as rivalry over prospective settlement deals pre-existing tensions between groups by the high stakes involved in prospective settlement deals. In the National Park inquiry the Whanganui groups seem to have splintered into several competing groups of closely related people.[24] Although the Tribunal process tends to produce splinter groups there is an increasing movement to work together, especially among the groups who already have government recognition.[25] Lawyers have for many years worked as a team in the Tribunal process, co-ordinated by the head of claimant counsel (in this case Tom Bennion), and delegating amongst themselves specialist lines of argument.[26] As mentioned in chapter three, there seemed to be agreement among lawyers and claimants to blame the Crown for dealing with Horonuku Te Heuheu to the exclusion of other chiefs in the area, rather than pointing the finger at Te Heuheu himself. A similar feature of the discussion of current park issues is the near-absence of mention of topics which are controversial within claimant groups. The debate over the use of 1080 poison for the control of the possum pest, for example, has caused huge upheaval in the area covered by the National Park inquiry, with community protests and ongoing arguments. For farmers and forest owners (of whom there are many among the claimants), however, 1080 is an essential

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[23] Closing Submissions of the Crown, "Chapter 9: Park Management," paragraph 106, 30.

[24] Many writers have commented on this phenomenon more generally. See for example Carrie Wainwright, "Māori Representation Issues and the Courts," *Victoria University of Wellington Law Review* 25(2002). Jane Kelsey, "Treaty Justice in the 1980s " in *Nga Take: Ethnic Relations in Aotearoa/New Zealand*, ed. Paul Spoonley, David Pearson, and Cluny Macpherson (Palmerston North Dunmore Press, 1991). Tipene O'Regan, who was the chief negotiator in the Ngai Tahu claim, has commented on a phenomenon born from the incentive of settlement by which breakaway Māori groups shop through history for old tribal affiliations, which they then claim to be a continuous identity group entitling them to separate settlement. O'Regan gives these groups the disparaging title of "Ngāti Pūtea" – money tribes. I do not know enough about the politics of the area to know the root cause for the splintering of Whanganui groups in the National Park inquiry, but it seems on the face of it to be more related to debates about appropriate representation than to money-grabbing. O'Regan, "Old Myths and New Politics," 15.

[25] A good example of this is the 'Treelords' deal, signed in 2008, where three large North Island iwi (one of which was Ngāti Tūwharetoa) worked together to obtain a settlement worth over 400 million dollars.

[26] Boast, "Waitangi Tribunal Procedure," 60.

management tool for the health of their assets, as possums kill trees and can infect cows with tuberculosis. There is mention of opposition to 1080 in some of the individual submissions, particularly from the Whanganui groups who do not have a relationship with DOC, but the closing submissions slide over these internally controversial issues.[27]

The tendency to characterise the Crown and Māori as distinct and opposed camps also obstructed a clear discussion of the current relationship situation in the conservancy. The way the claims system functions makes invisible the roles of people who represent both Crown and claimants. The most glaring example of this is the fact that the roles of Pou Kura Taiao, DOC's Māori advisors, were barely mentioned in the claim. The conservator's submission acknowledged the work of the three successive Pou Kura Taiao, and noted that he believed DOC's staff had had a good relationship with each of them. No claimant submissions mentioned the Pou Kura Taiao, and on only one occasion was the issue raised by a claimant lawyer. Yet the program has a problem, raised in interviews, namely that one or two people cannot liaise with all the Māori groups in often very large conservancies. The program also has a difficulty appointing appropriate people, as each will have their own particular affiliations within the area and yet must represent, and be perceived to represent, all the groups in the region. The omission of debate on such a key aspect of the established, funded DOC-Māori liaison system is a serious impediment to a frank discussion of how well relationships function in the conservancy.

Neither the Pou Kura Taiao from the Whanganui conservancy (who was from Ngāti Rangi, and also had a close relationship with the Tongariro/Taupō conservancy), nor the Tongariro/Taupō Pou Kura Taiao, from Ngāti Tūwharetoa, made submissions. They would have been in a difficult position had they chosen to make comments, working fulltime for an institution against which they were presenting a case. Another claimant who works part-time for DOC did make a submission and, according to his co-workers, found it a very difficult process.[28] It is a perverse effect of the adversarial nature of the inquiry process that people in these roles are put in such a quandary. When these key brokers of relationships between Māori and DOC are unable to voice their perspectives, there cannot be a frank discussion of the issues at stake.

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[27] The Lake Taupō and Lake Rotoaira Forest Trusts, for example, put in a submission to the 2007 Environmental Risk Management Authority review of the use of 1080 in New Zealand. They argued in favour of the continued use of 1080.

[28] Interview with Tongariro-Taupō Conservator and DOC Manager 2.

A second major problem with the debates regarding contemporary park management in the inquiry is the fact that there were only two Crown witnesses, and neither are sources of the key problem of inadequate Māori involvement in decision-making. The two people who took the stand on behalf of DOC: the policy manager, Doris Johnson and the local conservator, Paul Green, were appropriate representatives at least in the sense that they had both been in their roles for some time.[29] This is not always the case; if longstanding public servants leave their jobs before an inquiry gets underway it will be the new appointee who takes the stand.[30] Even with witnesses as knowledgeable as Johnson and Green, two is still a very small number of individuals to face questioning regarding the work of an entire government department. Johnston and Green were often unable to answer questions asked by claimant lawyers. At times claimant counsel asked questions which could only have been answered by a decision-maker at a higher level, as when Tom Bennion asked Johnston if a system of recognition of rights to cultural resources in national parks might follow the same lines as that which was already occurring under the then Foreshore and Seabed legislation. Johnston explained that she was not able to answer:

> You're asking me to speculate on future policy options or future options and I'm not feeling very comfortable about doing that. That is not a decision necessarily for a public servant to take.[31]

At other times Johnston simply was not the person in her team who had taken the action under criticism, as when Annette Sykes, the lawyer for Uenuku, questioned the Māori language title of the Draft Partnerships Toolbox that was a new policy initiative aimed to create better guidelines for interaction. Sykes was concerned that "he kete taonga whakakotahi" (roughly "a treasure kit for unity") could be seen as having assimilationist implications. Johnston was not responsible for the Māori title, and does not speak Māori, and the questioning floundered on for several minutes without headway.[32]

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[29] Green had been in his role for twenty years at the time of the hearing. Johnston had been in a policy role at Head Office for ten years.

[30] This happened in the Whanganui Lands inquiry. The Conservator who took the stand in that inquiry had been in the job only a few years, and in his evidence declared himself open to discussing the idea of the Whanganui National Park being a "Māori national park," though he explained he still had to function within National Park legislation. (Laurel Stowell, "Maori national park for region?" *Whanganui Chronicle,* May 27, 2009. http://www.wanganuichronicle.co.nz/local/news/maori-national-park-for-region/3798218/). His predecessor in the role of conservator, according to the Pou Kura Taiao who worked with him, had been very resistant to working with Māori. (Interview with Whanganui Pou Kura Taiao, October 23, 2007). That conservator will never have to face Tribunal lawyers and defend his attitude or actions.

[31] Draft Transcript of National Park Hearing 8, #4.1.12, 414.

[32] Ibid., 422-5.

When Paul Green took the stand similar situations occurred. Often the decisions he was asked to explain had been made at a higher level or were clearly explained as nothing more than compliance with DOC's legislation:

> KF: …what the Trust Board was seeking [in their 2003 submission regarding the then draft National Park Management Plan] was the creation of a joint management board between DoC and tangata whenua so that the park could be jointly managed in "a manner consistent with the ethos of the gift of Te Heuheu Tukino IV." Where did that idea of a joint management board get to?
>
> PG: The joint management board was not adopted, the principle was not adopted I guess because of it being in conflict with the legislation…

In these discussions regarding the Treaty relationship between Māori and the Government, there is barely any mention of the wider public. This is despite the obvious influence of public opinion on DOC's work. DOC's current initiatives involving Māori in conservation management, seen as inadequate by most tangata whenua, are criticised by many Pākehā as overly generous and unnecessary. The Pūkenga Atawhai programme for new DOC staff comes under regular attack from such commentators.[33] The public and media furore over DOC's decision to allow the lahar to run its natural course was peppered with accusations of pandering to Māori perspectives.[34] One Conservation Board member I interviewed accused unidentified DOC staff and other unidentified Conservation Board members as being "more Māori than the Māoris," and cited the lahar decision as an example.[35] The Crown submissions often emphasise the importance of catering for the interests of the wider public, but they say nothing of the pressure put on DOC by other interest groups. Paul Green's submission did mention this, again in the context of the lahar. These issues of realpolitik are of fundamental importance to an understanding of, or improvement upon, DOC-Maori relationships, but the Tribunal process discourages discussion of the political dilemmas and strategies of both DOC and Māori.

Conclusion

The debate in the inquiry regarding the contemporary relationship between DOC and Māori highlights some of the gaps in the narratives produced in the Tribunal process. The data available on the relationship between 2006 and 2008 shows relationships

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[33] Interview with Tongariro-Taupō Conservator and DOC Manager 2.
[34] The then Opposition Spokesperson for the Environment, Nick Smith, took particular advantage of this sentiment. See Television New Zealand news article "Anger at Ruapehu Safety Moves," June 7, 2001, http://tvnz.co.nz/content/42952/423466/article.html?cfb3=3 for one example.
[35] Interview with Conservation Board Member 1, March 2007.

mainly characterised by goodwill (at least among the groups with longstanding relationships), struggling with constraints from above, and pressures from outside in the form of interest groups and the media. The debate in the Tribunal, however, lumped local DOC staff in with headquarters. The Crown labelled this relationship 'Treaty compliant,' and the claimants argued the opposite. Both parties largely ignored the important roles played by the media and other interest groups. The Conservator was the only local DOC staff member to give evidence, leaving out the voices and the roles of many key people involved in the liaison with Māori, including the Pou Kura Taiao.

Some of these angles and omissions are required by the Tribunal process, and some seem to be a product of the adversarial style of operation. On the whole, the adversarial style of the inquiry did not reflect the nature of relationships on the ground (again, with the exception of those groups who have not been included in consultation in the past). The inquiry caused disruption in local relationships, as detailed in chapter four. These disruptions may well be overshadowed in the long term by the benefits that are likely to accrue from the Treaty settlement. However, some writers have argued for a move towards a more mediatory style of inquiry, which, if workable, might avoid some of the disruptions an adversarial system seems to cause.[36]

[36] For example Carrie Wainwright, "Māori Representation Issues and the Courts," *Victoria University of Wellington Law Review* 25 (2002). Wainwright argues for the benefits of mediation in order to address Māori representation issues, but it could as well be applied to assist those involved in local government-Māori relationships to continue working together while inquiries are in progress.

Figure 5: Sketches of Crown and claimant lawyers speaking at the closing hearings for the National Park Inquiry, 9-13 July, 2007. The backgrounds are invented.

Conclusion

Tongariro National Park sits on the brink of change at my time of writing. The Waitangi Tribunal report is yet to be released, but whatever its precise findings it is certain to recommend major alterations to the way DOC and Māori work together in park management. For over a hundred years the park has been a Pākehā 'island,' all its management decisions authored by successive governments and government agencies, and after settlement it will become something more of a 'beach,' a place where two cultures meet and negotiate.

Recently released Tribunal reports for other inquiries point in this direction. In July 2011 the Waitangi Tribunal released its report on the Flora and Fauna claim, *Ko Aotearoa Tēnei.* In it the Tribunal argued that though DOC generally did a good job in its practice of consulting with Māori, the model of consultation itself was due for replacement:

> We gathered from the evidence of conservators that the department valued and welcomed the Māori voice. We would not wish to diminish the willingness of the Government to integrate Māori voices into its partnership structures, and nor would we wish to undervalue the contribution those voices have made. But in reality, the Māori voice is included only as one stakeholder amongst many on governance boards. Given that the department must interpret and administer the Act so as to give effect to the principles of the Treaty of Waitangi, and given that the law is clear that the Treaty signified a partnership between the Crown and Māori, it must be time to move to a model which gives the Māori voice its own space.[1]

As I have argued in this thesis the structural model for relationships has a strong effect on the ability of those involved in working relationships to successfully negotiate with each other. A good model must provide both the security to allow both groups to share power, and the flexibility to allow them to innovate. The history of the relationship at Tongariro is an example of a relationship with plenty of potential being restricted by its formal institutional structure.

The relationship between DOC and Maori had several strengths at the time of the claim. There was substantial agreement about the way the mountains should be managed, all parties agreeing that a national park model was the most appropriate, though the ownership of the land and the rights to administer park rules were contested. Another

[1] Waitangi Tribunal, *Ko Aotearoa Tēnei,* Taumata tuarua, vol I., 343.

strength in the relationship was the political skill of Māori, especially Ngāti Tūwharetoa and Ngāti Rangi, and their willingness to pursue their interests through the courts and the Waitangi Tribunal. In each case the legal battles led to negotiated agreements between DOC and the groups in question. Māori persistence has been a strength in a poor situation, and the new structure of park relationships should ensure they will not, in future, have to go through the expensive and time-consuming process of legal action in order to achieve results.

A third, and perhaps the most important, strength in the DOC-Māori relationship at Tongariro at the time of my research was the longevity and resilience of personal relationships. The Tongariro-Taupō conservancy was a small one, in which most locals knew each other, and several key DOC staff had held their roles for twenty years or more. There were also some highly competent people in other roles who acted as brokers between DOC and local Māori. The people in these roles helped to support the Pou Kura Taiao, the official DOC-sponsored brokerage role, which would be an impossible role to fulfil without extra assistance.

The major, underlying problem in the relationship between DOC and Māori was the difference between their expectations of the nature and objectives of that relationship, and the fact that the government's expectations for the relationship were enshrined in the formal national park institution. Māori tended to use two main arguments to justify their involvement in, or control of the management of national parks. One was based around rights to the land and resources, derived from kinship connection and affirmed by the Treaty of Waitangi. The other argument was that they have useful or indispensable expertise in managing lands and resources. Although national-level DOC policy consistently references Treaty rights at the centre of its policy regarding Māori, and although kaitiakitanga is noted as a way of enhancing conservation outcomes, it is clear from the subsequent policy instructions that Māori are seen as a community group of slightly greater importance than others, but not a significant source of expertise, or a group carrying the status of owners. The arguments behind DOC policies are that the participation of community groups is necessary for the success of the modern conservation project, and that as interested parties they have a right to be informed and consulted.

Although significant, it is important to observe that these differing beliefs about the reasons for the relationship between DOC and Māori did not form an insurmountable

barrier to working together. They did, however, add another layer of complication to the ongoing negotiations between them. At the same time as they negotiated about park management issues, they were also continually negotiating the nature of their relationship.

The Treaty settlement which will shortly be negotiated between claimants and the Crown provides an opportunity to openly discuss differences, and design a framework for future relationships. It is to be hoped that those people who have been closely involved in relationships over the last few decades will also be closely involved in the settlement process. Perhaps it is best to finish with a few of their observations and requests.

> Having a real relationship with the Crown must be more than taking sides at a Tribunal hearing. It's got to be real.
>
> - Paranapa Rewi Otimi.[2]

> A first step would be for people on this side of the mountain [the west] to have a partnership as equals in how the National Park is run and its management … However, we don't want just consultation, we would like to see the mountain returned – we want our whenua back for us so we can return to our old way of life and manage the Park and utilise its resources according to the traditional Maori ways.
>
> - Te Mataara Wati Tira Pehi.[3]

> Being resourced to engage is fundamental to a relationship working. Payment is also acknowledgement for the time it takes and recognition of skill.
>
> - Nic Etheridge.[4]

> I look forward to the day when Ngāti Rangi's Treaty relationship with the Crown is genuinely and meaningfully acknowledged, held and maintained by the Crown.
>
> - Tony Waho.[5]

> I am not of the opinion that we as a nation must toe to toe against each other. Rather I believe we need to have an equal say in how we can work along side each other so that what we have left in the National park is preserved or improved so that those who follow may enjoy this special place as well. It is the place of those in power to change the attitude of Pakeha who see this process as a gravy train for Maori.

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[2] Brief of Evidence of Paranapa Rewi Otimi, Wai 1130, #G6(a), April 27, 2005, paragraph 10, 3.
[3] Brief of Evidence of Te Mataara Wati Tira Pehi, Wai 1130, D46(a), May 11, 2006, paragraphs 11.1-11.2, 18.
[4] Etheridge, *Co-Management between Government Conservation Agencies and Indigenous People*, 51.
[5] Brief of Evidence of Tony James Davis Waho, Wai 1130, #A66, February 10, 2006, paragraph 22, 5.

- Turoa Karatea.[6]

Kāti ake i konei.

[6] Brief of Evidence of Turoa Karatea, Wai 1130, #G26, September 28, 2006, paragraph 65, 17.

Appendix A: The Treaty of Waitangi / Te Tiriti o Waitangi

The Treaty of Waitangi: English Version:

HER MAJESTY VICTORIA, Queen of the United Kingdom of Great Britain and Ireland, regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand, and anxious to protect their just Rights and Property, and to secure to them the enjoyment of Peace and Good Order, had deemed it necessary, in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand, and the rapid extension of Emigration both from Europe and Australia which is still in progress, to constitute and appoint a functionary properly authorized to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands. Her Majesty, therefore, being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the Native population and to Her subjects, has been graciously pleased to empower and authorize me, William Hobson, a Captain in Her Majesty's Royal Navy, Consul and Lieutenant-Governor of such parts of New Zealand as may be, or hereafter shall be, ceded to Her Majesty, to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the First

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation, cede to Her Majesty the Queen of England, absolutely and without reservation, all the rights and powers of Sovereignty which the said Confederation or Individual chiefs respectively exercise or possess, or may be supposed to exercise or to possess, over their respective Territories as the sole Sovereigns thereof.

Article the Second

Her Majesty, the Queen of England, confirms and guarantees to the Chiefs and Tribes of New Zealand, and to the respective families and individuals thereof, the full, exclusive, and undisturbed possession of their Lands and Estates, Forests, Fisheries and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession, but the Chiefs of the United Tribes and the Individual Chiefs yield to Her Majesty the exclusive right of Pre-emption over such lands as the proprietors thereof may be disposed to alienate, at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the Third

In consideration thereof Her Majesty, the Queen of England, extends to the Natives of New Zealand Her Royal Protection, and imparts to them all the Rights and Privileges of British subjects.

WILLIAM HOBSON
Lieutenant-Governor

Now, therefore, We, the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria, in Waitangi, and We, the Separate and Independent Chiefs of New Zealand, claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof, in witness of which, we have attached our signatures or marks at the places and dates, respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord One thousand Eight hundred and forty.

Department of Māori Studies Massey University 1995

Te Tiriti o Waitangi: Māori Version:

Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me Nga Hapu o Nu Tirani, i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te ata noho hoki, kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga tangata Māori o Nu Tirani. Kia wakaaetia e nga Rangatira Māori te Kawanatanga o te Kuini,ki nga wahi katoa o te wenua nei me nga motu. Na te mea hoki he to komaha ke nga tangata o tona iwi kua noho ki tenei wenua, a e haere mai nei.

Na, ko te Kuini e hiahia ana kia wakaritea te Kawanatanga, kia kaua ai nga kino e puta mai ki te tangata Māori ki te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau, a Wiremu Hopihona, he Kaptiana it e Roiara Nawa, hei Kawana mo nga wahi katoa o Nu Tirani, e tukua aianei amua atu ki te Kuini, e ,mea atu ana ia ki nga Rangatira o te Wakaminenga o nga Hapu o Nu Tirani, me era Rangatira atu, enei ture ka korerotia nei.

Ko Te Tuatahi

Ko nga Rangatira o te Wakaminenga, me nga Rangatira katoa hoki, kihai i uru ki taua Wakaminenga, ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu te Kawanatanga katoa o o ratou wenua.

Ko Te Tuarua

Ko te Kuini o Ingarani ka wakarite ka whakaae ki nga Rangatira, ki nga Hapu, ki nga tangata katoa o Nu Tirani, te tino Rangitiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga, me nga Rangatira katoa atu, ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua, ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei i te Kuini hei kai hoko mona.

Ko Te Tuatoru

He wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini. Ka tiakina e te Kuini o Ingarani nga tangata Māori katoa o Nu Tirani. Ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

Signed William Hobson,
Consul and Lieutenant-Governor

Na, ko matou, ko nga Rangatira o te Wakaminenga o nga Hapu o Nu Tirani, ka huihui nei ki Waitangi. Ko matou hoki ko nga Rangatira o Nu Tirani, ka kite nei i te ritenga o enei kupu, ka tangohia, ka wakaaetia katoatia e matou. Koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi, i te ono o nga ra o Pepuere, i te tau kotahi mano, e waru rau, e wa tekau, o to tatou Ariki.

Department of Māori Studies Massey University 1995

English Translation of Māori Text:

VICTORIA, the Queen of England, in her concern to protect the chiefs and sub-tribes of New Zealand and in her desire to preserve their chieftainship and their lands to them and to maintain peace and good order considers it just to appoint an administrator, one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's Government being established over all parts of this land and (adjoining) islands and also because there are many of her subjects already living on this land and others yet to come.

So the Queen desires to establish a government so that no evil will come to Māori and European living in a state of lawlessness.

So the Queen has appointed me, William Hobson a captain in the Royal Navy, to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents to the chiefs of the Confederation chiefs of the sub-tribes of New Zealand and other chiefs these laws set out here.

The first

The Chiefs of the Confederation, and all the chiefs who have not joined the Confederation, give absolutely to the Queen of England forever the complete government over their land.

The second

The Queen of England agrees to protect the Chiefs, the sub-tribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages, and all their treasures. But on the other hand the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

The third

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.

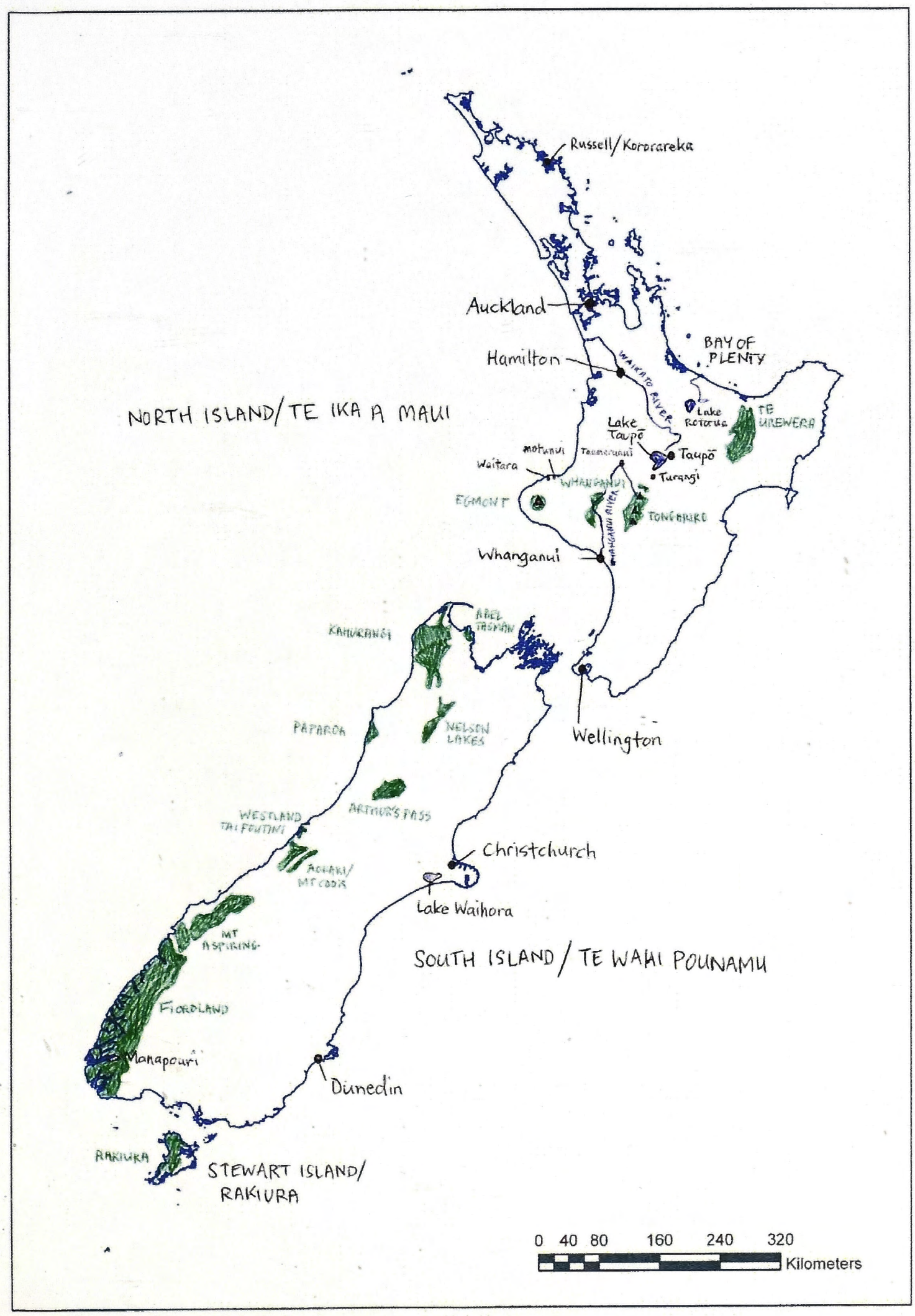
Signed WILLIAM HOBSON, Consul & Lieutenant-Governor

So we, the Chiefs of the Confederation and the sub-tribes of New Zealand meeting here at Waitangi having seen the shape of these words which we accept and agree to record our names and marks thus.

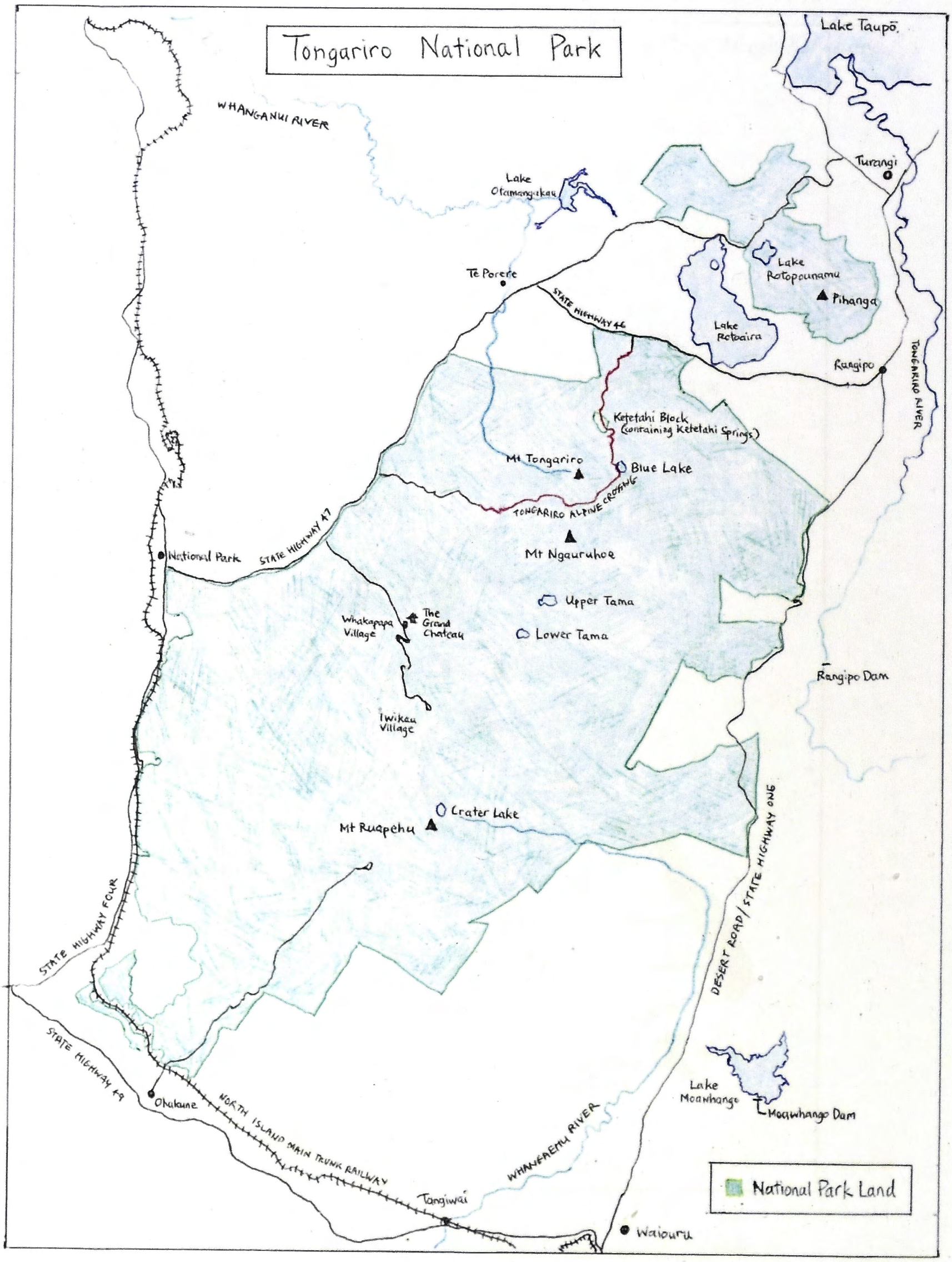
Was done at Waitangi on the sixth day of February in the year of our Lord 1840

Royal Commission on Social Policy Vol 2, 1988. Translation by Prof. Hugh Kawharu.

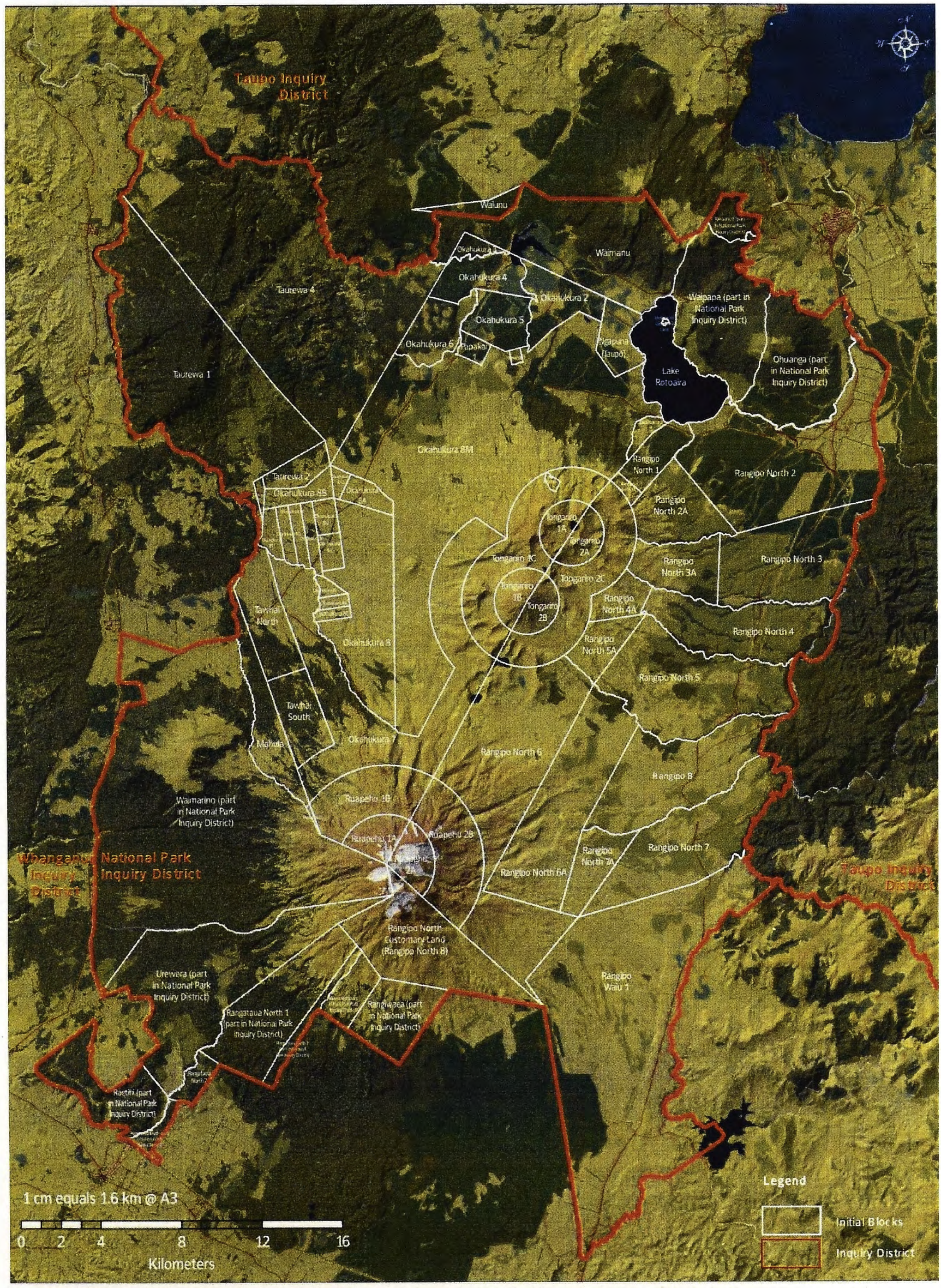
Appendix B: Map of New Zealand with Selected Sites Marked



Appendix C: Map of Tongariro National Park



Appendix D: Map of the Inquiry District



Source: National Park Inquiry Map Book, Wai 1130, #A48(a), 2005.

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Interview with member of Ngāti Rangi, July 30, 2008.
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Interview with Whanganui Pou Kura Taiao, October 23, 2007

Glossary of Māori Words

Note: many of these terms cannot be properly understood outside their cultural context. These definitions are intended only as a guide, not as full translations.

Ariki – high chief, paramount chief.

Hapū – a kinship unit made up of related whānau, a clan.

Iwi – an alliance of related hapū.

Kaitiaki – those who exercise kaitiakitanga.

Kaitiakitanga – "the obligation, arising from the kin relationship, to nurture or care for a person or thing it has a spiritual aspect, encompassing not only an obligation to care for and nurture not only physical well-being but also mauri." – Waitangi Tribunal, *Ko Aotearoa Tēnei,* Taumata Tuarua, vol. 1, 2011, 17.

Kāti ake i konei – a Māori phrase by way of conclusion. Can be translated as 'enough has been said, I will stop here.'

Kāwanatanga – governance or government.

Mana – prestige, power, control.

Mātauranga Māori – "the unique Māori way of viewing the world, incorporating both Māori culture and Māori traditional knowledge" – Waitangi Tribunal, *Ko Aotearoa Tēnei,* Taumata Tuarua, vol. 1, 2011, 1.

Maunga – mountain.

Mauri – a living essence or spirit.

Moana – sea or large lake, harbour.

Pepeha – proverb, quotation.

Pou Kura Taiao – DOC's Māori advisors and liaison officers, translated on the DOC website as "Indigenous Conservation Ethics Manager/s."

Pūkenga Atawhai – DOC's optional course on Māori issues for new staff.

Rāhui – moratorium, temporary ban on activities within an area, or use of a particular resource.

Rangatiratanga – chieftainship.

Rohe – area.

Tangata – person (tāngata = people).

Tāngata whenua – people of the land, local indigenous people.

Tangi – funeral ceremonies.

Taonga – treasured things, things of value, both tangible and intangible.

Tapu – sacred, sacrosanct.

Te Puni Kōkiri – The Ministry for Māori Development.

Tikanga – literally, 'rightness.' Sometimes translated as rules, customs, ethics or protocol.

Tino rangatiratanga – absolute chieftainship.

Wairua – spirit.

Whakapapa – n. line of descent, v. to trace a line of descent to an ancestor, to descend from an ancestor.

Whānau – extended family.

Whenua – land.